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Constitution making  
in Indiana

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Two hundred copies are to be furnished to the Indiana State Library and two hundred copies to the Historical Survey of Indiana University, for purposes of exchange with other states for similar publications. Of the \$25,000 appropriated to the Commission for Centennial purposes, \$5,000 were permitted to be used for historical publications.

#### NOTE TO SECOND PRINTING

Because of continued interest in Dr. Kettleborough's work on *Constitution Making in Indiana* which has long been out of print, the Indiana Historical Bureau, the successor of the Indiana Historical Commission, is reprinting it by offset. A revised and up-dated third volume is planned.

Hubert H. Hawkins, Director  
Indiana Historical Bureau  
June, 1971



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INDIANA HISTORICAL COLLECTIONS

# CONSTITUTION MAKING IN INDIANA

A Source Book of Constitutional Documents  
with Historical Introduction and  
Critical Notes

BY

CHARLES KETTLEBOROUGH, PH.D.

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Legislative Information

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1780-1851

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## PREFACE

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THE documents comprised in these two volumes are designed to illustrate and interpret the constitutional growth and development of the State of Indiana from the beginnings of its institutional history to the present. For the hundred years from 1816-1916, an attempt has been made to include every document of a constitutional character. The amount of labor required to collect these documents from the session laws, the journals of the House and Senate and from newspapers has been rather extraordinary, and the lack of indices or at best the service of very imperfect indices has added to the difficulties. Under these circumstances it would be rather strange if some important documents had not been overlooked and omitted which deserve a place in this collection. Many bills and resolutions are no longer in existence and only the titles are given. During comparatively recent times, when the originals of these documents have been preserved, it seemed unnecessary to give the text of proposed bills submitting the question of calling a constitutional convention to the people since the provisions of these measures are substantially identical. As all constitutional measures are required to pass through the ordinary legislative process it has seemed necessary to give a detailed description of the adventures of each measure as it was advanced to maturity and the political complexion of the General Assembly having it under consideration, since politics has been the most potent factor in advancing or retarding constitutional amendments. The historical introductions preceding each document were rendered brief to secure the necessary compression of the work into two volumes. The general introduction is treated topically, as that plan, after repeated trials, and confronted by the exigency of limited space, seemed to be the only practicable one.

It is impossible for the compiler to acknowledge his indebtedness to all of the persons whose assistance has been valuable in the preparation of this work. It would, however, be an act of ingratitude not to formally express my indebtedness to the staff of the State Library for their unfailing courtesy in extending the use of the facilities of their historical collections; to Dr. Samuel B. Harding of Indiana University who rendered invaluable assistance in devising the general format of the work; to Mrs. Edward F.

White who read through the entire manuscript, prepared the index, and who not only made countless helpful suggestions, but saved me from several embarrassing errors; and to Mrs. E. A. Doyle and Miss Augusta Murphy for arduous, painstaking and commendable work in preparing and verifying the manuscript. In conclusion, I wish to express my especial obligation to my friend, Mr. John A. Lapp, the Director of the Indiana Bureau of Legislative Information, who has followed the preparation of these volumes with sympathetic interest and to whose unfailing generosity I owe the opportunity of undertaking and completing this work.

CHARLES KETTLEBOROUGH.

Indianapolis,  
November 7, 1916.

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THE Indiana Historical Commission desires to express its appreciation and thanks to Dr. Kettleborough for his excellent work. He has rendered a service to the people of Indiana. The Commission believes that his volumes are of signal historical importance, and that they will prove to be of decided value to all who may be especially interested in the legislative and governmental experience of Indiana. They are such volumes as no private publisher could afford to produce for commercial gain. Their sale to private buyers, or even to libraries, might be negligible. But it is eminently desirable that such service to our history as the production of these volumes, should be rendered to the State. During 1916 Indiana celebrated the centennial of her statehood in many worthy ways. The public and historical value to the State of these volumes will be recognized by all intelligent citizens, and the Commission deem their publication at this time another fitting memorial of the Centennial Year.

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# Constitution Making in Indiana

## INTRODUCTION

### PART I. 1816-1850

**Adoption of the Constitution of 1816.**—The memorial embodying the formal application for the admission of Indiana to the Union on an equality with the original States was adopted on December 11, 1815.<sup>1</sup> The official census of the Territory which was recommended by a Congressional resolution reported on March 31, 1812,<sup>2</sup> and authorized by the Territorial Assembly on August 29, 1814,<sup>3</sup> disclosed the fact that the total population of the Territory was 63,897, and the total number of white males of the age of 21 years and upwards was 12,112.<sup>4</sup> As the mandatory provisions of the Ordinance of 1787 had been fully complied with, an Enabling Act, authorizing the inhabitants of Indiana Territory to adopt a Constitution, form a State Government and assume a name, was passed on April 19, 1816.<sup>5</sup>

It is perhaps impossible to determine with assurance why the demand for Statehood culminated in 1815. Among the circumstances which conspired to create that demand, the following may be enumerated with confidence: (1) The rapid increase in the population,<sup>6</sup> and the steady growth of the material prosperity of the Territory; (2) The excessive powers exercised by the Terri-

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1. Western Sun, January 27, 1816. The vote on this resolution was 33-8. Letter from Corydon, in Western Sun of June 22, 1816.

2. Annals, 12th Cong., 1st Session, 1247.

3. Acts, 1st Session, 5th General Assembly, 92.

4. Annals, 14th Cong., 1st Session, 460.

5. Ibid., 1841.

6. The total population of Indiana Territory in 1800 was 4,875, of which 907 were free white males 21 years of age or over. The vote on September 11, 1804, in all counties except Wayne, which did not receive the proclamation in time to hold an election on the question of adopting a representative form of government, was 400. Owing to a lack of information as to the time and place of the election, the distance from the voting places, and the further fact that it was a busy time of the year, a full vote was not cast. In 1809, when Indiana and Illinois were separated, the population was estimated at 17,000. On May 22, 1809, the total number of votes cast for delegate to Congress in Knox, Harrison, Clark and Dearborn counties was 911. According to the official census of 1810, the population of the Territory was 24,520 of which 3,441 were free white males of the age of 21 years or over.



torial Governor,<sup>7</sup> a Federalistic practice which was wholly incompatible with the vigorous self-assurance of Jeffersonian Democracy; (3) The uncomfortable and distasteful political restraints imposed by an autocratic system upon an electorate which had been quickened by the impulses of effervescent Democracy; (4) Evidences of undoubted corruption and favoritism in the administration of the agencies of local government; (5) A wide-spread feeling that the political inconsequence of the Territory led to a studied neglect of its interests, particularly in affording inadequate security and protection against the incursions of the Indians; (6) The shifting of political control from the "Virginia Aristocrats," inspired by the "Vincennes Junto," to the anti-slavery "Parvenues" of the southeastern portions of the Territory;<sup>8</sup> (7) The alleged ambition of certain Territorial politicians to distinguish themselves in public life.<sup>9</sup> The chief argument advanced in opposition to the assumption of Statehood was the expense and the increased taxation.<sup>10</sup>

Although Jonathan Jennings, the Territorial delegate in Congress, assured his constituents that "the times fixed for the election and meeting of the Convention, are as well suited to every interest and circumstance . . . as I was enabled to select when every consideration was duly weighed,"<sup>11</sup> the provisions of the Enabling Act fixing the date of the election of delegates on May 13, and the assembling of the Convention on June 10,

7. By virtue of the Ordinance of 1787, the Territorial Governor appointed all subordinate officers, both civil and military. According to the provisions of the Compiled Laws of 1807, the officers appointed by the Governor included: The General Court, the Court of Chancery, the Auditor and Treasurer; one sheriff, one coroner, one surveyor, one recorder, one clerk, and three Judges of the Court of Common Pleas in each county; one or more constables and two overseers of the poor in each township; one or more pilots at the falls of the Ohio; and numerous Justices of the Peace, Notaries Public and Militia Officers.

8. The Slavery controversy has been fully emphasized by other writers. A Circular Address to the Citizens of Indiana by Moses Wiley opposed even a partial admission of slavery. (*Western Sun*, February 3, 1816.) "A Citizen of Gibson" advanced the well-known theory that the diffusion of slaves would ameliorate their condition (*Ibid.*, March 2, 1816.) "Another Citizen of Gibson" was opposed to the introduction of slavery. (*Ibid.*, March 30, 1816 ;

9. There was a wide-spread conviction that Jonathan Jennings, the delegate in Congress, was promoting the scheme of a State government in the hope that he might be elected its first Governor. "A Settler" accused Jennings of playing a cunning and astute game to offer himself as a candidate for Governor; his friends, in fact, had already declared that Jennings was a candidate, and that fact accounted for his "crooked and sinister maneuvering" at Washington. (*Western Sun*, February 10 and 24, 1816.) See, also, "A Farmer of Knox County", (*Ibid.*, April 20, 1816.)

10. "A Republican" in *Western Sun Extra* of June 1, 1816, "Farmers and Patriot Rights", *Ibid.*, February 10, 1816. "A Farmer of Knox County", *Ibid.*, April 20, 1816.

11. Open Letter to his constituents, *Western Sun*, May 11, 1816.

were vigorously and perhaps justly denounced as a "gross imposition." The Act was first printed in the *Western Sun* of May 3rd and thus only 11 days intervened between the reception of the measure and the date on which delegates were selected. As the Territory was extensive, the population scattered and there was no method except individual rumor by which voters could be apprised of the approaching election, the voters would come to the polls unprepared. Moreover, the persons who were selected as delegates would have less than a month in which "to collect the sense of the Territory" and fit themselves to conform with it.<sup>12</sup> The election of delegates was held on May 13.

The Constitutional Convention of 1816 assembled at Corydon, in Harrison county, on Monday, June 10,<sup>13</sup> and adjourned on Saturday, June 29, 1816.<sup>14</sup> The Convention was composed of 43 delegates elected from the 13 counties into which the State was at that time divided.<sup>15</sup> The organization of the Convention was quickly effected. The required oath was administered to all of the delegates present,<sup>16</sup> and they immediately took their seats and proceeded to the election of officers. Jonathan Jennings was elected President, William Hendricks, Secretary,<sup>17</sup> and Henry Batman, Doorkeeper. The immediate duties of the Convention were assigned to a Committee on Contested Elections, a Committee on Ways and Means,<sup>18</sup> and a Committee on Printing.<sup>19</sup> There were two rather unimportant election contests, one in Gibson and one in Posey county. The contested seat of Posey county was claimed by Dan Lynn and Peter Wilkinson, and, on recommendation of the committee, Lynn was seated. The contest in Gibson

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12. *Western Sun*, May 3, 1816.

13. The time and place of meeting were both prescribed in the Enabling Act.

14. The Convention was actually in session 18 days; June 16 and June 23 fell on Sunday. There was a forenoon and an afternoon session on every day except the afternoon of Saturday, June 15. The Convention convened at 9 o'clock, a. m., from June 10 to 17, inclusive; thereafter, at 8 o'clock except Monday, June 24, when the Convention assembled at 9 o'clock. The afternoon sessions began at 2 and 3 o'clock.

15. See Appendix XIV.

16. There were 41 delegates present at the opening session; John Boone of Harrison county appeared later the same day and Benjamin Parke of Knox was not present until June 14.

17. Jennings and Hendricks were elected by ballot; Batman was "appointed." On June 12, it was found necessary to employ two assistant secretaries, and Robert A. New and James M. Tunstall were elected by ballot. Three days later, on June 15, three additional assistant secretaries were elected by ballot; these were John F. Ross, George Spencer and Richard M. Heth. Their services were found necessary to expedite the business of the Convention. At the same time, Henry Bougher was appointed assistant doorkeeper.

18. It is not clear what the duties of this committee were.

19. These committees were all appointed by the President.

county involved the legality of the votes given in the Harmony Society, but because of the indefiniteness of the charges no positive action was taken.<sup>20</sup> The rules and regulations for the Government of the Convention were reported and adopted on June 11.<sup>21</sup> The contract for printing was awarded to Mann Butler, the editor of the Louisville Correspondent.<sup>22</sup>

The Convention was now fully organized and ready to proceed to the discharge of the duties which had been assigned to it by the Enabling Act. The first duty which the Convention was required to discharge was to determine by a majority vote of the 43 delegates whether it was more expedient to form a Constitution and State Government at that time, or to defer the adoption of a Constitution and the assumption of Statehood to some future time. If the Convention determined that it was more expedient to postpone the assumption of Statehood until some future time, they were then required to provide by ordinance for the election of delegates to the proposed future Convention, and to fix the time and place of meeting. If they determined that it was more expedient to form a State Government at that time, they were authorized to proceed forthwith to frame and adopt a Constitution. The third duty was to ratify the boundaries prescribed in the Enabling Act, or to accept, in default of such ratification, the boundaries prescribed by the Ordinance of 1787. The fourth duty was to adopt or reject a series of five propositions, submitted by Congress, all of which were contingent on the condition that all federal lands sold within the State during the ensuing period of five years should be exempt from taxation. In consideration of the acceptance of the proposed tax exemption, the federal government obligated itself to extend to the new State the following concessions: (1) The grant of Section No. 16 or its equivalent in

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20. The credentials or certificates of election were in possession of the Secretary of the Territory when the Convention assembled; they were given to the President and by him laid before the Convention and referred to the Committee on Contested Elections.

21. Prior to the adoption of these rules, the rules for conducting business in the territorial legislature, as far as applicable, were observed. (See Document No. 44.)

22. The contract awarded to Butler included the printing of the Journals and the Rules at 75 cents per thousand m's and 75 cents a token for any quantity of printing distinct from setting the type above 5 quires and not to exceed 10 quires. The paper was a separate charge of \$6 a ream, a price which Butler had paid for \$250 worth. In other words, the work would cost \$21 a sheet for every 500 copies, a sheet to make 16 pages of octavo printing. The printer further agreed to deliver 16 pages every 2 weeks if the copy was furnished to him in time, and he thought possibly he could deliver them every week. These appear to be the common fair terms for similar work all over the State.



every township for the use of common schools; (2) The use of all salt springs; (3) 5% of the net proceeds of the sale of all lands within the State for the construction of roads and canals; (4) One entire township for the use of a seminary of learning; (5) Four sections of land for the location of the seat of government.

On the first question which the Convention was called upon to determine, Mr. Ferris submitted a resolution on June 10, the first day of the Convention, declaring it to be "expedient, at this time, to proceed to form a Constitution and State Government." On motion of Mr. Johnson, the consideration of the resolution was postponed until June 11, and on that day the question was taken up for consideration in the Committee of the Whole. The entire afternoon was spent in the consideration of the question, and at the end of the discussion the question was put and was adopted by a vote of 34-8.<sup>23</sup>

Having determined to proceed to the formation and adoption of a Constitution and the organization of a State Government, the Convention, on June 12th, provided for the appointment of 12 committees, each to prepare a draft of an article of the new Constitution. These committees were appointed by the President and were as follows: Bill of rights and preamble; distribution of the powers of Government; the legislative department; the executive department; the judicial department; impeachments;<sup>24</sup> general provisions; mode of revising the Constitution; change of government; preservation of existing laws and appeals from the territorial to the State courts; education; militia; and elections. On June 19, the Convention further provided for the appointment of a Committee on Banks and Banking.<sup>25</sup>

As soon as the constitutional committees had been appointed, the Convention adjourned. On the following day, June 13, four of the committees reported the articles which had been assigned to them,<sup>26</sup> and other articles were reported from time to time as rapidly as they were completed. The procedure fol-

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23. The entire membership of the Convention was recorded in the vote on this question except Parke of Knox county who did not appear until June 14. The 8 members who voted against the resolution were Johnson and Polke of Knox, half the delegation; Robb and Rapp of Gibson, half the delegation; Hunt, Maxwell and Smöck of Jefferson, the entire delegation; and Boone of Harrison.

24. Discharged on June 13.

25. On June 13 a committee on prisons was appointed, but the committee was discharged the following day. Six committees were composed of 5 members each, 2 of 6, and one of 8, 9, 7, and 11 each.

26. Distribution of powers, mode of revision, elections, and legislative department.



lowed in the consideration, amendment and adoption of the several articles was similar to the procedure in the territorial legislature, except that each article when completed was submitted to a Committee on Revision for final adjustment.<sup>27</sup> The duty of enrolling the Constitution was entrusted to a Committee of Enrollments of three delegates.<sup>28</sup>

By an ordinance formally adopted on June 29, the Convention accepted the five contingent congressional propositions and ratified the boundaries of the new commonwealth as prescribed in the Enabling Act.<sup>29</sup> To insure a favorable selection of the grants made by Congress, the Convention, on June 19, appointed three of its members a committee to select the township for the location of the seminary of learning, and the lands necessary for the successful operation of the salt springs, and designate them to the Register of the Land Office at Vincennes or Jeffersonvill and request that they be recommended to the President.<sup>30</sup>

The Constitution which was adopted was of the standard type then in vogue in all of the older commonwealths. With one important exception,<sup>31</sup> it was taken in its entirety, both as regards substance and phraseology, from the Ohio Constitution of 1802 and the Kentucky Constitution of 1799. The Constitution was never submitted to the electors for ratification but it began to be operative on June 29, the day on which the Convention completed its labors, and when Jonathan Jennings, the President of the Convention, issued an official notice to the several county sheriffs, requiring them to hold an election on the first Monday of August, 1816, for the election of State, county and congressional officers.<sup>32</sup> The election of Governor, Lieutenant-Governor, Representative to Congress, State senators and representatives and county sheriffs and coroners was held on August 5, 1816. The first General Assembly convened on November 4, 1816, and the first Governor took the prescribed oath and was formally inducted into office on November 7.<sup>33</sup>

The Convention which sat from June 10 to June 29 had

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27. The Committee on Revision was appointed on June 21 and consisted of 5 delegates.

28. This committee was appointed on June 27. The Constitution was enrolled on parchment and was signed by the President and Secretary and each member of the Convention and deposited in the office of the Secretary of State.

29. Laws, 3rd Session, 39.

30. Conv. Jour. 36.

31. The provision relative to amendments.

32. Western Sun, July 6, 1816.

33. House Journal, 1st Session, 3 and 10.

fully complied with all the requirements of the Enabling Act. On June 11, they determined that it was expedient at that time to assume Statehood; on June 27, they formally accepted the five contingent congressional propositions; on June 29, they formally adopted a Constitution which represented the labor and deliberations of a fortnight; on the same day, the President of the Convention issued an official notice authorizing the qualified voters to elect a representative to the Lower House of Congress. On August 5, the election was held and William Hendricks was chosen for that office. On November 4, the first General Assembly convened at Corydon and three days later, on November 7, Governor Jonathan Jennings was inducted into office; besides the election of State officers, the General Assembly elected James Noble and Waller Taylor as the first United States senators, on November 8,<sup>34</sup> and on November 13 they chose three Presidential electors.<sup>35</sup> A copy of the Constitution, accompanied by a letter of explanation, was laid before Congress on January 9, 1817.<sup>36</sup> Three things remained to procure the full and formal admission of Indiana Territory to the Union. The first of these was the official act of admission; the second was the admission of her senators and her representative to seats in their respective Houses; and the third was the recognition of her Presidential electors. William Hendricks was admitted to the lower house on December 2; the State was formally admitted to full membership in the Union on December 11;<sup>37</sup> James Noble and Waller Taylor were admitted to the senate on December 12; and on February 12, after a brief but animated struggle, her Presidential electors were recognized and permitted to participate in the election of President and Vice-President.<sup>38</sup>

James Lemon and Robert A. New were appointed by the Convention to attend to the printing and distribution of the Constitution and the Journals.<sup>39</sup> Two complete copies of the Constitution were made; one copy was delivered to the President of the Convention, laid before the first General Assembly, and ordered deposited in the office of the Secretary of State.<sup>40</sup> The Journals of the Convention were distributed as follows: Eleven copies were

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34. House Journal, 1st Session, 16.

35. Ibid., 23.

36. Conv. Jour. 66, 68: Annals 14th Cong., 2d Session, 55.

37. Annals, 14th Cong., 2d Session, 1348.

38. Ibid., 943-50.

39. Conv. Jour. 69, and House Journal, 1st Session, 105.

40. Conv. Jour. 68, and Senate Journal, 1st Session, 20.

sent to each member of the Convention; two copies to each Secretary; and the remainder were deposited with the Secretary of State.<sup>41</sup>

The total cost of the Convention was \$3,076.21.<sup>42</sup> Each member of the Convention was allowed \$2 per day for each day's attendance and \$2 for each twenty-five miles traveled to and from the seat of government by the most usual route; the secretary and assistant secretaries received \$3.50 per day for each day's attendance; the doorkeeper and assistant doorkeeper received \$2 per day;<sup>43</sup> Mann Butler was allowed \$200 for printing and stitching the Constitution and Journals;<sup>44</sup> \$41.50 was appropriated for books, stationery, etc.; \$27.50 for tables, benches, etc.; and \$40 for overseeing the printing, stitching, and distribution of the Constitution and Journals.<sup>45</sup>

**Criticisms of the Constitution of 1816.**—So far as can be determined by an inspection of the meager contemporary literature of the subject, the Constitution of 1816 was received with general satisfaction and without serious protest from the people.<sup>46</sup> Some few of the provisions, of the new instrument of Government, because of obscurities and imperfections, aroused adverse criticism for a period of about 5 years immediately following its adoption. The provisions of the Constitution which evoked the most serious hostile criticism were the following: (1) Fixing the seat of Government at Corydon for a period of 9 years.<sup>47</sup> The establishment or removal of the State capitol, it was contended, is a legislative act and cannot be made a part of a Constitution; if such a provision is incorporated in a Constitution, it can be altered only by the power which made it, and not by a legislative body, as the Constitution of 1816 provided; hence all acts done under cover of such a provision would be null and void. (2) Prohibiting the call-

41. Conv. Jour. 67.

42. Auditor's Report, December 8, 1817, in Senate Journal, 2d Sess., 19.

43. Laws, 1st Session, 171. The per diem of the members and officers was paid on presentation of a certificate signed by the President of the Convention. Conv. Jour. 67.

44. Butler's claim for printing and stitching the Journals was presented at the second and fourth sessions of the General Assembly, but on the grounds that he had been paid \$200, the claim was disallowed. House Journal, 2d Sess., 54 and 104. Ibid., 4th Session, 165 and 205.

45. Laws, 1st Session, 239.

46. Although the Western Sun, published at Vincennes by Elihu Stout, is the only available source of information for the period immediately following the year 1816, the absence of criticism, either favorable or unfavorable, is conspicuous and impressive.

47. Article XI, Section 11.



ing of a constitutional convention to alter, revise or amend the Constitution until the expiration of a full period of 12 years.<sup>48</sup> This unwise prohibition was neither a legislative act nor a legitimate exercise of power by a Convention, but an inalienable power which resides solely in the people.<sup>49</sup> (3) Limiting the salaries of public officers, which was purely a legislative function.<sup>50</sup> (4) Making all ministerial officers elective. This provision represented a retrocession to the people of a power which they had delegated to the Convention to be otherwise disposed of. "The people did not wish, from the reluctance which they manifest in attending elections, to vote for these officers." (5) Limiting the term of office of judges. The tenure of office of a judge should be determined by good behavior. Elected judges are too much inclined to yield their judicial independence to conciliate public opinion and secure their reelection.<sup>51</sup> (6) The failure to provide for an attorney-general or prosecuting attorneys to prosecute criminal

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48. Article VIII.

49. The assumption in this argument is that Article VIII of the Constitution was wholly mandatory and not partly mandatory and partly permissive, and, that, therefore, it was impossible to procure amendments to the Constitution prior to the year 1828. The arguments relative to the location of the seat of government and the amendment of the Constitution were advanced by one "Hortensius," the earliest critic of the Constitution, who contributed an article to the *Cornucopia*, a paper published in New Lexington, Kentucky, some time before the provisions of the Constitution were generally known to the people of Indiana. In this criticism, "Hortensius" says of the Constitution that "its general principles are truly republican," but it "contains provisions contrary to every principle of true republicanism, and subversive of the rights of the people." This was to be expected from "the frenzy and intrigue which marked the progress of the measure of a State government in every stage, from their commencement at Corydon in December last, to Washington city; from thence to your elections on the 2d Monday in May, till they again reached Corydon . . . ." The arraignment concludes by recommending the defeat at the approaching election of all those men who favored the adoption of these provisions. The *Western Sun*, which represented the Vincennes Junta, and was piqued because it had not received the printing contract authorized by the Convention, approved the criticisms of "Hortensius" and recommended the defeat of every man who had served in the Convention. The editor of the *Sun* had not yet seen a copy of the Constitution, which had been sent to Kentucky to be printed "either to delay the publication, or secure some extrinsic support . . . ." The Constitution was a "premature instrument"; "if these two provisions are in it, we are not, we cannot be safe." "Twelve years deprived of a right that is inalienable, by a body of men called a Convention, elected to secure our rights, not to deprive us of them!" *Western Sun*, July 20, 1816. See, also, articles by "A Citizen" and "A New-Comer" in the *Western Sun* of August 17, 1816, and July 20, 1818. The Constitution was printed and ready for sale on August 21, 1816. *Western Sun*, August 17 and 24, 1816.

50. Article XI, Section 16.

51. The dissertation on the provisions of the Constitution relative to the salaries of public officers, the election of ministerial officers, and the election and tenure of judges was written by a citizen of Ft. Harrison, under date of July 20, 1818, who signed himself "A New-Comer." He had lived in the State since the beginning of the year 1818. *Sun and Advertiser*, August 1, 1818.

accusations. (7) The existence of ambiguous and equivocal provisions.<sup>52</sup>

The arguments employed prior to and during the year 1816 in opposing the assumption of statehood were also used retrospectively for some time after the adoption of the Constitution. The Constitution was described as a "premature instrument" and "premature offspring," and there were those who professed to fear that Indiana would resemble "a puny child, taken from nurse too soon . . . ."<sup>53</sup> As late as 1821, when the bank controversy, then a leading political issue in the country, had become an acute public question in this State, the Constitution was described as "miserable, objectionable and disjointed." As the ambitious intrigues of the banking junto, including Governor Jennings, were thwarted by the Territorial Government, "We were therefore hurried into the State Form to gratify a group of demagogues, who have since managed and manacled us . . . ."<sup>54</sup> In offering himself to the voters of Knox, Daviess and Martin counties for State senator, in 1821, John Ewing advanced the opinion that "some of our grievances had their origin in the formation of our State Constitution . . . ."<sup>55</sup> Another grievance, which was temporary in its operation, was the short time allowed by the Constitution for the election of State and local officers.<sup>56</sup> On the other hand, most of the citizens of the State were undoubtedly proud of the fact that the territory had achieved Statehood, and their temporary and minor grievances

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52. This criticism was made by one who signed himself "A Citizen." He calls attention to the fact that Section 8 of Article IV provides that the Governor, with the advice of the senate, shall commission all officers not otherwise directed. In another place in the same section it was provided that all "officers" created by the General Assembly shall be filled in a manner to be directed by law. The word "officers" should be "offices." The first paragraph of this section is explained away by Section 15 of Article XI, which provided that all town and township officers shall be appointed as designated by law. This, continues the writer, is "A Negative pregnant with an affirmative," and the latter provision repeals the former. There is no way to remedy these defects but by another Convention. *Western Sun*, August 17, 1816.

53. Letter "To the Citizens of Indiana" by "A Federal Republican", published in the *Western Sun* of July 27, 1816.

54. Statements by "A Republican" and "A Voter" in *Western Sun* of June 23, June 30, July 21 and August 4, 1821.

55. *Western Sun*, July 14, 1821.

56. Article XIII, Section 8. The Convention adjourned on June 29 and the elections were fixed for the first Monday in August (August 5). Under date of July 17, 1816, George R. C. Sullivan announced himself as a candidate for Congress, and referred, in his formal announcement, to the "Hasty and precipitate elections" which did not enable him to visit the electors of the several counties but only announce himself through the newspapers. *Western Sun*, July 20, 1816.

were mitigated by the reflection that if the Constitution was defective and imperfect, it could be corrected.<sup>57</sup>

**Location of the Seat of Government.**—With two exceptions, the only method of amending the Constitution of 1816 was by a constitutional convention. By these two exceptions, the General Assembly was authorized to substitute viva voce voting for voting by ballot at the session of 1821, and to remove the seat of government from Corydon at the session of 1825 or at any subsequent session. Section 11 of Article XI of the Constitution provided that “Corydon, in Harrison county, shall be the seat of Government of the State of Indiana, until the year eighteen hundred and twenty-five, and until removed by law.” This section was proposed on the floor of the Convention on June 26th, as an additional section, and was adopted by consent without a contest. Although historical evidence of the character of the combat is wanting, it is tolerably safe to conjecture that a struggle over the incorporation of this provision in the Constitution transpired before its formal presentation in the Convention; that all opposition had been compromised or effectually allayed; that a “gentlemen’s agreement” had been entered into by the delegates; and that an arrangement, involving a tacit, unspecified consideration, had been perfected with the city of Corydon.<sup>58</sup> This provision of the Constitution was unpopular from the first; rival sec-

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57. At a Fourth of July celebration at Ft. Harrison in 1816, the toast to Indiana was: “Another star upon the national banner, just rising into importance—may she always unite simplicity of manners with virtuous firmness and energetic patriotism.” *Western Sun*, August 3, 1816. At a Fourth of July celebration at Vincennes in 1818, the toast to Indiana was: “A new star in the west;” the toast to “The present constitution and rulers of the State of Indiana” was: “If they are not what they should be the people can have them altered.” In the oration of the day, John Ewing said that in assuming statehood, Indiana had the “examples and lessons of the old States to stimulate and guide her efforts.” Whether this collective wisdom had enlightened the local statesmen it was for the people to say, and “that which exists, can only be changed by them.” *Western Sun*, July 11, 1818, and *Extra* of the same date. At a Washington’s birthday celebration at Vincennes in 1823, one toast was: “The State of Indiana—may our citizens duly consider that the Constitution was made by themselves, and that they can alter it at pleasure.” *Western Sun*, March 1, 1823.

58. On January 18, 1825, Mr. Beckes of Knox county secured the adoption of a resolution requesting the Auditor of Public Accounts, the Secretary of State and the Treasurer of State to attend the session of the House on January 24 and give such information as they might have in their possession “relative to a bond heretofore given to the Governor for the use of the State, under arrangement between the members of the Convention and the citizens of Corydon, at the formation of the Constitution; in pursuance of which, it was agreed, and consequently a provision inserted in said Constitution, fixing the seat of government at Corydon, until the year 1825; also, what proceedings have been taken for the collection of said bond . . . .” No further action was taken on this resolution. *House Journal*, 9th Session, 77. See, also, *Laws*, 1st Sess., 252, for a lost Harrison county bond.



tions of the State were palpably disgruntled; and the adoption of the provision was alleged to be an unwarranted usurpation of power.<sup>59</sup> Moreover, the location of the capital on the extreme southern periphery of the new commonwealth had decided geographical disadvantages, while the spread of population northward constantly accentuated the prevalent discontent. It was inevitable, therefore, that a legislative contest would arise over this irrepressible and perplexing question and it is not surprising that the first attempt to secure a modification of the Constitution was inspired by a determination to modify or repeal this section. This contest, which was imminent from the date when the provisions of the Constitution had become generally known, was precipitated in 1817, at the second annual session of the General Assembly. It will be recalled that the Constitution had not been submitted to the people for ratification; hence the sentiments of the electorate on the question of the location of the seat of Government, as well as on the other provisions of the Constitution, were problematical and conjectural. It was now determined to employ the referendum; to submit the proposition to a direct vote of the people; to obtain an undoubted plebiscite on an isolated question; and, apparently, if sanctioned by popular approbation, to delete or modify this objectionable constitutional provision, and thus abridge the period which must elapse before moving the capital northward to a more convenient and strategic location. Accordingly, on December 19, the House adopted a resolution providing for the appointment of a committee "to take into consideration the propriety of taking the sense of the people of this State, on that part of the Constitution which fixes the seat of Government at Corydon until the year 1825, with leave to report by bill or otherwise."<sup>60</sup> The speaker immediately appointed a committee of 9 representatives.<sup>61</sup> This committee, impressed with the propriety of submitting the question to the people, returned a favorable report and a joint resolution on December 26. Sentiment in the House crystallized slowly. On January 9, an attempt to indefinitely postpone the measure was lost by a vote of 7 to 21, and it was immediately thereafter considered at length in the Committee of the Whole. Three days later, on January 12, the consideration of the measure was resumed and with little apparent

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59. See page xxii.

60. The resolution was presented by Mr. Beggs of Clark county.

61. This committee consisted of three representatives from Clark county, and one each from Jefferson, Washington, Harrison, Jackson, Knox and Franklin.



ceremony it was indefinitely postponed by a vote of 18-10.<sup>62</sup> Obviously, in this issue, the question turned on the expediency, political and otherwise, of removing the seat of Government from Corydon prior to 1825; the necessity of amending the Constitution within two years from the date of its adoption, which was implied in and essential to the successful achievement of this object, was apparently of subsidiary importance; while the employment of the referendum to ascertain the popular sentiment on this question, while not an unknown political device, seems to have challenged least attention.<sup>63</sup>

No subsequent attempt was made to modify or delete this provision of the Constitution. The General Assembly had evidently determined to abide the nine year waiting period, and thereafter to effect a removal of the capital in accordance with the provision of the Constitution. At all events, the question fell completely into abeyance until January 11, 1820, when an act was passed appointing ten commissioners "to select and locate a site for the permanent seat of Government of the State of Indiana."<sup>64</sup> This commission selected a site and reported their findings to the 5th General Assembly. Thereupon, an act was adopted on January 6, 1821, by the terms of which the site selected by these commissioners was "established as a permanent seat of Government of the State of Indiana," and provision was made for the appointment of three commissioners to lay out a town.<sup>65</sup> Finally, by an act of January 20, 1824, Indianapolis in Marion county was "adopted and established, as the permanent seat of Government of this State, upon, from and after the second Monday in January, in the year one thousand eight hundred and twenty-five."<sup>66</sup>

**Method of Voting—Ballot vs. Viva Voce.**—Section 2 of Article VI, of the Constitution provided that "All elections shall be by ballot: Provided, That the General Assembly may, if they deem

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62. The geographical distribution of the vote on this resolution is not especially significant; Harrison county voted solidly in opposition to the resolution; Franklin and Knox divided; Clark, Jefferson, Jackson and Washington voted in favor; and all the other counties were opposed.

63. House Journal, 2d Session, 66, 94, 115, 153 and 163. The joint resolution itself is not in existence and its provisions can only be conjectured from the character of the instructions submitted to the committee. A proposed resolution of condemnation introduced in the House at the 6th Session, on December 27, 1821, spoke of the referendum vote on the method of voting, then under consideration, as one of the "clear correct and immutable principles of republicanism." House Journal, 6th Session, 306.

64. Laws, 4th Session, 18.

65. Laws, 5th Session, 44.

66. Laws, 8th Session, 370.

it more expedient, at their session in eighteen hundred and twenty-one, change the mode so as to vote viva voce, after which time it shall remain unalterable." This provision of the Constitution represented a compromise between the advocates of the method of voting by ballot and the method of voting viva voce. As originally reported from committee, the section provided that all voting should be viva voce.<sup>67</sup> The section was amended in Committee of the Whole on June 14th by a vote of 22-21 to provide that all votes should be given by ballot for a period of four years, and thereafter the method was subject to regulation by the legislature.<sup>68</sup> A subsequent alteration left the section in the form in which it was finally incorporated in the Constitution.<sup>69</sup> By virtue of the provisions of this section as finally adopted, the method of voting was to be by ballot for a period of five years; the General Assembly was authorized to change the method so as to vote viva voce at the session of 1821; if they failed to make the change at that time, the method was thereafter to "remain unalterable." Public opinion on this question in the Convention,<sup>70</sup> the General Assembly and the State at large was pretty evenly divided. No attempt was made to secure a change in this provision prior to the date fixed by the Constitution as had been done in the case of the seat of Government provision. Obviously, the General Assembly was unwilling to assume the responsibility of making a change in this provision without express instructions from the electors. Accordingly, a joint resolution, authorizing the qualified electors of the State to vote at the general election of August, 1821, on the question whether they were in favor of voting by ballot or viva voce was adopted on December 23, 1820.<sup>71</sup>

The determination of this question was now transferred to the

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67. Convention Journal pp. 22-3.

68. Ibid.

69. Ibid.

70. The vote in the Convention on the substitution of the method of voting by ballot for the method of voting viva voce was 22-21.

71. Laws, 5th Session, 136. For proceedings on the measure see Senate Journal 40, 54, 58, 92, 93, 112, 114, 115, 120 and 129; and House Journal 86, 110, 124, 129, 149 and 158. The resolution was introduced by Elisha Harrison. One other measure was presented on this same subject. On December 7, 1820, Samuel Milroy introduced a resolution in the House instructing the Committee on Elections to inquire into the expediency of providing by law for taking the votes of the electors at the general election in August, 1821, to ascertain whether they were favorable to a change in the mode of voting as prescribed in the Constitution. The substance of this resolution, as we have seen, was already before the Senate in Mr. Harrison's resolution, and hence no further action was taken. House Journal, 78.

people, and aroused sufficient interest to secure a tolerably fair expression of opinion on the question.<sup>72</sup> The *Western Sun* carried notices of the introduction and adventures of the resolution and printed it in full in the issue of May 12, 1821, with the non-committal comment that "it will be a consideration of the utmost importance with the people and should be maturely and carefully examined before giving their decision." The *Indiana Centinel* was in favor of retaining the method of voting by ballot as "the safest, purest, and most correct and reasonable mode which can possibly be devised." They admitted, however, that there was "much difference of opinion."<sup>73</sup> The general election of 1821 was held on August 6, but according to the report of the House Committee on Elections, the Secretary of State received returns from only 15 of the 39 counties.<sup>74</sup> Although none of these returns are available, except those from Knox county, we know from other sources that the sentiment of the electors was rather evenly divided with perhaps a slight preponderance in favor of voting by ballot.

The failure of more than half of the county clerks to certify the official returns on the referendum vote to the Secretary of State, and the inadequacy of the returns available on which to base a trustworthy conclusion, again devolved on the General Assembly the responsibility of solving the problem of the future method of voting. Moreover, it was necessary to take definite action on this question at the session of 1821 or the method of voting prescribed in the Constitution would thereafter remain unalterable. The imperative necessity of dealing with this question and the even division of sentiment in both Houses of the Sixth General Assem-

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72. Unfortunately only a fraction of the county clerks submitted certified returns to the Secretary of State. In Knox county, more than six-sevenths of the electors voted on this question.

73. Issue of June 30, 1821. The *Centinel* was published at Vincennes.

74. The only election returns available are those from Knox county which are given in the *Western Sun* of August 11, 1821. In that county, 387 votes were polled in favor of voting by ballot and 250 in favor of voting viva voce. The total vote for senator was 723. On December 5, in response to a Senate resolution, the Secretary of State laid the election returns before that body. Senate Journal, 6th Session, 92 and 101. The investigation of the election returns was made for the House by the Committee on Elections. House Journal, 6th Session, 11 and 326. In a protest against the passage of the House Bill designed to change the method of voting from ballot to viva voce, signed by 15 representatives (see *infra*), the assertion was made that "from the best information obtained, a majority of the qualified electors in the State, who expressed their opinion upon that subject at the last election, decided in favor of ballot . . . ." The protest charged, moreover, that the report of the Committee on Elections made to the House was "partial, containing only 15 counties when there were 39 in the State."



bly,<sup>75</sup> precipitated an animated parliamentary contest which continued for a fortnight and was attended by hostile and retaliatory demonstrations between the two chambers. Before a conclusion could be reached, the General Assembly had adjourned and the method of voting by ballot was allowed to stand unimpaired. Basing our conclusions on the test vote taken in each House, the representatives favored viva voce voting by a majority of four and the senators favored voting by ballot by a majority of one.

On December 14, 1821, in response to a resolution of instruction, the House Committee on Elections reported a bill which was designed to substitute the method of voting viva voce for voting by ballot.<sup>76</sup> The opponents of this measure fought its passage with such skill and determination that it was not brought to a final vote until December 29. On December 17, an attempt was made to indefinitely postpone the bill, but the motion was lost by a vote of 10-23; the opponents of the measure then attempted to effect a compromise by the incorporation of a provision authorizing electors to vote either by ballot or viva voce, but this proposition was so unsatisfactory that it was promptly rejected by a vote of 15-27;<sup>77</sup> at this juncture the consideration of the bill was deferred for a period of about ten days, when, on December 26, it was taken up for consideration by a vote of 24-16; on the following day the House refused to continue the consideration of the bill by a vote of 20-20.<sup>78</sup> An inspection of the four test votes given discloses the fact that the friends of the bill were in a majority of approximately 2 to 1 from December 17, the date of the first adverse action, up to and including December 26. By the following day, December 27, the partisans of the meas-

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75. In a review of pending legislation, written for his constituents and printed in the *Western Sun* of January 5, 1822, General W. Johnston, a member of the House from Knox county, observed that the question as to the method of voting was under consideration, and that the sentiment was pretty evenly divided. The senate adopted two resolutions opposing a change in the method of voting by the close margin of 8 to 7 in both cases. The final vote on the passage of the House Bill substituting viva voce voting for voting by ballot is not given, but in the protest signed by 15 members of the House enumerating their objections to the measure, it is alleged that the "friends" of viva voce voting consisted of "a majority of four of the whole House . . . ."

76. On November 20, the Committee on Elections was instructed to ascertain the vote cast at the August election on the method of voting and to report by bill or otherwise, but only a statistical report was made. *House Journal*, 11, 326.

77. In the protest objecting to the passage of this bill, signed by 15 members of the House (see *infra*), the measure was adversely criticised because it made "no provision for receiving votes in any other way than by ballot," a manifest unfairness, "inasmuch as its friends . . . refused to have amended or committed for amendment so as to provide for the change contemplated in the Constitution."

78. *House Journal*, 6th Session, 196, 209, 224, 291 and 298.

ure had perceptibly diminished. It was at this point in the proceedings that the adventitious aid of the Senate was secured. The senate had already, on December 6, gone on record by a vote of 8-7 in favor of the method of voting by ballot.<sup>79</sup> On December 27, when the cohesion of the viva vocers in the House displayed unmistakable symptoms of relaxation, the Senate adopted a resolution by a vote of 8-7,<sup>80</sup> declaring it to be "inexpedient at this time to change the mode of voting to viva voce . . . ."<sup>81</sup> The House took umbrage at this action of the Senate which they could view "in no other light than a direct attempt to forestall the decision of the House . . . ."<sup>82</sup> The members of the House were impliedly bound and "should be governed by the vote of their constituents" cast at the general election of 1821 on the method of voting; moreover, the House of Representatives "from the circumstance of their having been elected at a period when that point was particularly submitted to the people, ought to be considered the organ of the popular will, in preference to the senate; a majority of whom held their seats without reference to that subject." In view of these facts, a resolution was introduced in the House on December 28 declaring the Senate resolution "unparliamentary" and asking that it be returned. The resolution was rejected by a vote of 16-25; on the same day, the House refused to advance the bill by a vote of 8-33; on the following day, December 29, the bill passed the House over the signed protest of 15 members and was referred to the senate.<sup>82</sup>

Aside from the belief that viva voce voting would be unsafe and contribute to the corruption of the electorate,<sup>83</sup> the chief arguments advanced in opposition to a change in the method of voting were that a majority of the electors who expressed themselves at the general election of 1821 were in favor of voting by ballot; the method of voting viva voce was calculated to restrain the freedom of elections by subjecting debtors and tenants<sup>84</sup>

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79. Senate Journal, 6th Session, 107.

80. Although this vote is numerically identical with the vote on the same proposition obtained on December 6, the members recorded as voting are not quite the same.

81. Senate Journal, 6th Session, 222, and House Journal, 304.

82. The senate, of course, took no action on this measure. House Journal, 6th Session, 306, 311-14 and 325.

83. Indiana Centinel, June 30, 1821.

84. On the subject of debtors, the Constitution provided that "The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison, after delivering up his estate for the benefit of his creditor or creditors, in such manner as shall be prescribed by law."

to the influence of those to whom they were dependent; it would foment "personal controversies amongst neighbors" and "deter the peaceable citizen from attending the polls"; "the votes in many large counties could not be received in one day" and as a result "the beneficial consequences which might result from having elections held in one place" would be defeated; finally, the advantages of having the elections for each county held in one place,<sup>85</sup> "in order that candidates for office might have it in their power to refute the falsehoods and misrepresentations which are too frequently circulated for the accomplishment of improper purposes" were entirely eliminated.<sup>86</sup>

The opportunity of changing the method of voting, as we have seen, had gone by default, but the proponents of this method had by no means relinquished their determination to secure the coveted change. The only way this could now be done was to secure an amendment to the Constitution, and the only way an amendment could be secured was to call a convention. Unsuccessful attempts were made in 1826, 1833 and 1844 to provide for the call of a constitutional convention and the submission to a referendum vote at the same time certain specified amendments which the Convention when met was to incorporate in the new Constitution; among these proposed amendments was the substitution of viva voce voting for voting by ballot.<sup>87</sup> During the summer of 1828, when the question of calling a constitutional convention was being industriously advocated throughout the State, Mr. Newton C. Jones a candidate for the legislature from Bartholomew county, and the Indianapolis Gazette both went on record in favor of a convention and recommended the substitution of viva voce voting for voting by ballot as one of the needed amendments. The Gazette was partial to voting viva voce as a "more independent mode."<sup>88</sup> The method of voting by ballot had so completely demonstrated its superiority over the method of voting viva voce that the sub-

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85. General elections in each county were held at the county seat.

86. Of the objections enumerated, (1) opposed substitutions of viva voce for ballot voting on general principles; (2) opposed the substitution at this time; and (3) opposed the substitution in the manner prescribed in the bill. The two sources of information are the senate resolution of December 27, declaring it inexpedient to change the method of voting and the protest of 15 House members filed on December 29 just after the passage of the House bill. House Journal, 6th Session, 326, and Senate Journal, 222. Another reason alleged for the defeat of the bill was that the House at this session had decided that militia elections should be by ballot, and to vote viva voce at all other elections would constitute "an unusual, if not an unconstitutional distinction."

87. House Journal, 10th Session, 307; 17th Session, 467; and 29th Session, 86.

88. Indianapolis Gazette, June 5 and July 3, 1828.



ject does not seem to have risen to the threshold of the public conscience during the campaigns of 1846, 1849 and 1850, and of the 333 proposed amendments submitted to the consideration of the various committees of the Constitutional Convention of 1850, only one proposed to revert to the method of voting *viva voce*.<sup>89</sup> One proposal was made on the floor of the Convention of 1850 to provide that all voting should be *viva voce* but it aroused no support. The provision of the present Constitution prescribing that voting in the General Assembly shall be *viva voce* and by ballot by the electorate, was adopted by an almost unanimous vote.<sup>90</sup>

**The Twelve-Year Amending Provision of the Constitution.**—With the exception of the provisions relating to the location of the seat of Government and the method of voting, which have already been discussed, the only method of amending the Constitution of 1816 was by calling a Constitutional Convention. Article VIII provided that “Every twelfth year . . . there shall be a poll opened in which the qualified electors of the State shall express by vote, whether they are in favor of calling a convention or not . . . .” The language of this article is manifestly ambiguous and is susceptible of two interpretations. It either meant that the question of calling a constitutional convention must be submitted at least once every 12 years, but might be submitted sooner and oftener; or it limited the submission of the question to once in every 12-year period, and the submission of the question at any other time would be null and void as being in plain contravention of a constitutional provision. Governors, politicians, journalists, legislators, lawyers and citizens generally were divided in their opinions on the meaning of this Article. For the first two or three years after the adoption of the Constitution, the opinion which was most generally entertained was that the power of the General Assembly to submit the question of calling a constitutional convention was restricted to once in every 12 years, that is in 1828, 1840, 1852, etc.; the interpretation placed upon this provision by different expositors, and by the same expositors at different times, was influenced by economic or other motives; but the theory, and the sound one, which ultimately prevailed, was that the General Assembly was competent to submit the question of calling a constitutional convention at any time.

Two of the earliest expositors of the Constitution, who concealed their identity under the pen-names of “Hortensius” and

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89. *Conv. Jour.*, 32.

90. *Ibid.*, 169, 172, 465, 481, 524 and 532.



"A New-Comer," believed that the General Assembly was incompetent to submit the question of calling a constitutional convention oftener than once in 12 years. "Hortensius" refers to the "assumption . . . that it is impossible to amend the Constitution in less than 12 years," expresses his conviction that that is the correct theory, and deplores the fact that such a provision should have been adopted.<sup>91</sup> "A New-Comer" likewise criticised the Constitution adversely because of the generally accepted belief "that a convention should not be called to revise the Constitution for 12 years"<sup>92</sup> Actuated largely by the criticism of "Hortensius," the Western Sun originally espoused this theory and in their issue of July 20, 1816, they referred to this provision in the following language: "Twelve years deprived of a right that is inalienable, by a body of men called a Convention, elected to secure our rights, not to deprive us of them!" Seven years later they had abandoned this strict construction view and in their issue of March 8, 1823, in response to the recommendation of "Junius," they said: "For ourselves, we are in favor of calling a convention . . . ."

Popular opinion on this subject was tolerably well reflected in the public press during the year 1823 when the question of calling a constitutional convention was first submitted to the people. The Indiana Gazette<sup>93</sup> was opposed to calling a convention that year; early in April they defined their attitude on this point and printed the act providing for the submission of the question of calling a constitutional convention and the 12-year provision of the Constitution.<sup>94</sup> In a subsequent issue, they commented favorably on the 12-year provision and expressed the conviction that "good policy should dictate the propriety of waiting the Constitutional period for Indiana to revise her Constitution."<sup>95</sup> The extreme view was taken by "A Farmer" who advanced the theory that the judges of elections had no authority to open a poll for or against a convention "inasmuch as the Constitution does not authorize any such election;"<sup>96</sup> and subsequently the same argument was developed by the participants in a facetious Dialogue published in the Indiana Gazette of July 16, who

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91. Western Sun, July 20, 1816.

92. Sun and Advertiser, August 1, 1818.

93. The Indiana Gazette was published at Corydon.

94. Cited in Western Sun, April 5, 1823.

95. Issue of April 9, 1823.

96. Article contributed to the Indiana Farmer and cited in the Indiana Gazette of June 11, 1823.

described the act as “unconstitutional” and referred to the fact that the 12-year period had not yet expired. The Western Censor, in explaining the causes which brought about the defeat of the attempt to call a constitutional convention in 1823, said that many electors had voted in the negative because the Constitution provided for a vote on the question every 12 years, and they therefore considered the act unconstitutional.<sup>97</sup> A commentator who signed himself “P”, in an article contributed to the *Indiana Farmer*, expressed the sentiment that “we do believe that the subject should have rested until the constitutional period would have arrived, at which no statutory provision would have been required.”<sup>98</sup>

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The formal and official action of the General Assembly in submitting the question of calling a constitutional convention renders their attitude on this point unequivocal. Manifestly, they assumed that they were competent to submit this question at any time. According to the strict construction of the 12-year provision, the question could be submitted only in the years 1828, 1840 and 1852. As a matter of fact, this question was actually submitted to a referendum vote in 1823, 1828, 1840, 1846 and 1849, and a new constitution had been adopted and had actually gone into operation prior to 1852. Moreover, unsuccessful attempts to provide for the calling of a constitutional convention were made in 1820, 1821, 1826, 1827, 1829, 1830, 1831, 1833, 1835, 1836, 1841, 1843, 1844, 1845, and 1847. An examination of the interpretation placed upon the language of this provision, however, discloses the fact that the members of the General Assembly were divided in their opinions as to its true intent and meaning. In 1840, when the question of calling a constitutional convention was submitted to the people at the second 12-year period, the act provided that the election notice to be given should contain the statement “that the people . . . will not have the right to vote for or against another convention for the space of twelve years;”<sup>99</sup> and this provision was actually incorporated in the notices given.<sup>1</sup> At the 28th session of 1843, a resolution was introduced in the House requesting the Judiciary Committee “to inquire into the constitutionality of the legislature of the State

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97. Cited in the *Indiana Gazette* of September 10, 1823.

98. Cited, *Ibid.*, June 11, 1823.

99. *Laws*, 24th Session, 21.

1. See notice to voters of Knox county, *Western Sun and Advertiser*, August 8, 1840.

of Indiana, calling a convention for the purpose of amending or altering the Constitution of the State at any other time than once in every twelve years.''<sup>2</sup> Although this resolution was promptly rejected, it reveals the latent doubt in the minds of the legislators. At the August election of 1846 the question of calling a constitutional convention was submitted to the electors for the fourth time; 32,521 votes were cast in favor and 27,485 votes against calling a convention; this was less than one-half of the voters who attended the polls and voted on other questions.<sup>3</sup> Although the question of the legality of the act submitting the call for a convention had been raised during the campaign and had not only perturbed the minds of conscientious electors but had actually kept some persons from voting altogether, it was not presented in a concrete form until the official election returns disclosed the fact that a majority of the electors who had voted on the question were in favor of calling a convention. And although the question was complicated with others of equal or greater consequence, it precipitated the most animated and by far the ablest discussion in the General Assembly which it had aroused since the adoption of the Constitution. Within a fortnight after the election, the discussion was instituted by the party journals and it continued with unabated vigor until it culminated in a parliamentary contest during the 31st Session of 1846-47. The Indiana Sentinel, the leading Democratic journal of the State, and one of the ablest advocates of a convention, after consulting able lawyers on the question, set forth its doctrines in a lengthy editorial on August 29. Stripped of unnecessary verbiage and redundancy with which the discussion is encumbered, their leading postulate was that Article 8 "does not confer, enlarge or restrict any right of the people to assemble in convention, by delegates, for the purpose of altering or amending the form of government. It is merely *directory*, as a mode of proceeding and a matter of convenience.'" In this contention they were ably sustained by a lucid and convincing dissertation in the Brookville Democrat. The theory which was skillfully advanced by the Democrat was that the 12-year amending section "contains an obligation, declaring what shall be done; but at the same time it does not prohibit the holding of elections oftener than once in twelve years for the same purpose.'" In defense of this position, they quoted Article I, Section 2, of the Constitution which provided that the people

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2. House Journal, 28th Session, 110.

3. Governor Whitcomb's Message, House Journal, 31st Session, 22.



“have, at all times, an inalienable and indefeasible right to alter or reform their government in such manner as they may think proper.”<sup>4</sup> The *Weekly State Journal*, the leading Whig organ of the State, was silent on this question until December 30, when the discussion of certain proposed measures in the General Assembly had gained full momentum. Actuated either by deliberate logical convictions or motives of political expediency, they appeared in the somewhat anomalous role of champion and journalistic advocate of the strict construction theory of the Constitution. The 12-year provision, they contended, should be faithfully and strictly observed. “It is contended that, inasmuch as the . . . article does not, in so many words, interdict any other mode, the legislature may, at any time, direct a poll to be opened . . . .” This they held to be “a forced inference not warranted by a fair construction of that instrument.” The question of completing the constitutional process already set in motion, by proceeding to the convocation of a convention and the election of delegates, on the authority of a somewhat dubious plebiscite, had, in fact, become a divisive party issue, and, with a few notable exceptions, the casuistry and logical ingenuity of the dialecticians was wholly ancillary to the stronger ties of party allegiance. The question of calling a convention had been submitted to the people by a General Assembly which was predominantly Democratic. It had therefore become identified with the Democratic platform pledges and was regarded as a Democratic measure. The General Assembly which convened in December, 1846, was slightly Whig in both Chambers, and the Whigs declined to mature a measure which had been enacted by their political opponents. The *Brookville Democrat* alleged that the Whig editors generally were standing stanchly by the strict construction of the 12-year amending provision.<sup>5</sup> Senator Read, a Democrat, assured his colleagues that in his district the question of calling a constitutional convention had not been made a party issue, but that it was voted for by Whigs and Democrats alike.<sup>6</sup> In the General Assembly, however, the party alignment was fully acknowledged. In the Senate, Mr. Stewart, and in the House, Mr. Secrist, both Whigs, held that a Convention could be called legally, but they both admitted that in that attitude they differed from their political friends.

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4. Quoted in *Sentinel*, September 19, 1846.

5. Cited in the *Sentinel* of September 19.

6. *Journal*, January 8, 1847.



A bill providing for the election of delegates to a convention, the passage of which would have constituted an acknowledgement of the legality of all prior proceedings, was introduced in each Chamber. The House bill was introduced by a Whig and the Senate bill by a Democrat. In the House, the bill was submitted to the consideration of a select committee consisting of 6 Democrats and 6 Whigs. This committee, after mature deliberation, presented a divided report. The majority report, recommending passage, was signed by one Whig, the author, and by five Democrats. Of the two minority reports, one, recommending indefinite postponement, was signed by five Whigs, and the other, defending the legality of calling a convention, was signed by one Democrat. The five members who presented the first minority report differed "among themselves as to the constitutional power of the General Assembly to call a convention oftener than once in twelve years . . . ." They assured the House that they could cite "numerous instances" where "gentlemen of high legal acquirements" and jurists "learned in the law" not only doubted "if such a convention can be called oftener than once in twelve years," but had actually refused to vote at the election "either for or against a convention" on the conviction that "the clause of their constitution providing for such vote every twelfth year was not only declaratory of the imperative duty of the General Assembly to do so, at the periods stated, but that it also operated as a limitation of the power of the legislature to do so, at any other period, during the intervening time." There was, moreover, a "very large class" of citizens who "honestly entertained these views" and had therefore declined to vote "under what they believed to be an unconstitutional act."<sup>7</sup> A second minority report, signed by one member, set forth the opposite theory that the intention of the framers of the Constitution was "to make it obligatory upon the authorities of the State on every twelfth year . . . to give the citizens . . . an opportunity of expressing . . . their satisfaction with, or disapprobation of the fundamental law of the State . . . . The language is imperative . . . and the construction must . . . be forced indeed, which can torture this command to the authorities of the State, to open a poll at certain stated times, into a prohibition of the exercise of such a right at any other time."<sup>8</sup>

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7. House Journal, 31st Session, 278.

8. Ibid., 214.

The vote on the motion to indefinitely postpone the bill was 48 Whigs and 13 Democrats in favor of indefinite postponement and 31 Democrats and 4 Whigs opposed. The senate bill was submitted to a select committee of 7 Whigs and 5 Democrats who returned a unanimous report in favor of passage. The vote on final passage of the bill was 21 Democrats and 3 Whigs in favor and 21 Whigs and 1 Democrat opposed.

The proposed measures providing for the election of delegates to a constitutional convention called forth the ablest talent in both Houses in defense and in contravention of the 12-year amending clause. Senator Read maintained that the people had an undoubted right to amend their constitution at any time; Senator Stewart, with a rather exquisite refinement of logic, contended that the General Assembly had no constitutional authority to call a convention at any time except at the 12-year periods, but he maintained that the people were not similarly bound and could call a convention at any time, but, unfortunately, he failed to designate the manner or the agency by which a convention was to be summoned. The most elaborate arguments were advanced by the contestants in the House, and these arguments were sustained by an imposing array of citations. Mr. Seerist held that the 12-year clause, if strictly construed, was a nullity and he advanced the argument, formerly set forth by the Brookville Democrat, that "the people, by no constitutional provision, could take from themselves, or restrain or limit, their right to alter or amend their constitution." Mr. Yaryan adhered tenaciously to the 12-year provision and considered the whole proceeding illegal. Mr. Porter contended that the 12-year provision was not binding, but for expediency's sake he thought it ought to be complied with.

The complete failure of the attempt to provide for the election of delegates to a constitutional convention has already been anticipated. In the Senate, the Democrats, by the accession of 3 Whig votes and the deflection of only 1 Democratic vote, succeeding in passing their bill by a majority of 2. In the House, the Whigs, by the accession of 13 Democratic votes and the loss of only 4 of their own partisans, compassed the defeat of the House bill by a majority of 26. At the 33d Session of 1848, a bill was introduced in the House providing for the submission of the question of calling a constitutional convention. While this bill was under consideration, an unsuccessful attempt was made to amend it by providing that the question of calling a constitutional con-

vention should be submitted "at the time provided by the first section of the 8th Article of the Constitution."<sup>9</sup>

The neatest statement of the interpretation of this Article which ultimately prevailed and which was acted upon in the calling of the Convention of 1851, and which disposed finally of all argument on this question, is contained in the biennial message of Governor James Whitcomb, delivered to the two Houses of the General Assembly on December 6, 1848. After strongly recommending the summoning of a convention and enumerating the amendments which should be made in the Constitution, the Governor set forth the following exposition of Article VIII.

"The opinion has been expressed that by the eighth article of the present constitution, the people have no right to vote upon this question, except in every twelfth year thereafter. But it seems now to be generally admitted that that article is directory and not permissive.

"In framing the constitution, it was doubtless borne in mind that the future condition of the State might require corresponding modifications of that instrument. But by securing to the people the privilege of voting upon the question every twelfth year, their power to exercise that right in any other year for which their representatives should make suitable provision, was not taken away. If it was taken away, it was competent, by lengthening the interval for the vote to any imaginable extent, to virtually bind posterity in all future time and prevent any amendment whatever."<sup>10</sup>

The influence of economic and other motives in distorting the logic of the dialecticians who expended their ingenuity in interpreting the 12-year provision of the Constitution, was most apparent in 1823 when this question was submitted to a referendum vote for the first time. At that time the slavery question was surreptitiously injected into the campaign and was one of the submerged but ill-concealed motives for calling a convention. The pro-slavery advocates of a convention, who had previously interpreted the 12-year provision according to the tenets of the strict constructionists, abandoned their quondam position without explanation or compunction, and the anti-slavery opponents of a convention, who had habitually construed Article VIII liberally, then insisted that the provision was mandatory and prohibitive.

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9. House Journal, 33d Session, 35.

10. Ibid., 23.



**The Constitutional Referendum of 1823.**—The question of calling a constitutional convention was submitted to the people for the first time at the August election of 1823, seven years after the adoption of the Constitution, and five years before the expiration of the first full 12-year period. The measure authorizing the submission of this question to a referendum vote was first introduced at the 4th Session of 1819-1820 but was indefinitely postponed on first reading by a vote of 8-2.<sup>11</sup> At the 6th Session of 1821, the measure was again introduced. It was at this session that the question of changing the method of voting was under consideration. On December 27th, the day on which the Senate resolution disapproving a change in the method of voting, as proposed by the House bill then rapidly approaching maturity,<sup>12</sup> was adopted a bill was introduced providing for the submission of the question of calling a constitutional convention. The connection of these two events leads to the conjecture that this attempt was designed to place the responsibility of determining the method of voting, and possibly the location of the seat of government, which had already been vigorously agitated, on a convention. The bill passed the Senate by a vote of 9-6. The House was still in bad humor over the practical rejection of its measure substituting voting viva voce for voting by ballot and they promptly rejected the bill by a vote of 13-23.<sup>13</sup> At the 7th Session of 1822, the Senate adopted a resolution on December 12th providing for the appointment of a select committee of five "to inquire into the expediency of a law to authorize the qualified voters throughout the State, at the next August election, to vote for or against calling a convention for the revision of the State constitution . . . ." Convinced, apparently, of the expediency of this proposition, the committee reported a bill on December 23rd; this measure passed the Senate on December 29th, and the House on January 1, 1823, and was approved by the Governor on January 6.<sup>14</sup>

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11. Senate Journal, 4th Session, 129 and 135. This bill, as well as the similar bills introduced in 1821 and 1823, was introduced by Elisha Harrison of Spencer and Perry counties.

12. See p. xxvii.

13. Senate Journal, 6th Session, 138, 221, 227 and 231.

14. The vote on final passage is not given. Senate Journal, 7th Session, 69, 123, 126, 131, 150, 159, 172, 212 and 227. House Journal, 207, 218, 224, 235 and 256. Laws, 7th Session, 121. An attempt was made on first reading in the House to indefinitely postpone the bill, but the attempt was lost by a vote of 26-15. Electors were required to indicate their approval or disapproval of the proposal to call a convention at the bottom of the ticket, containing the names of the candidates for senator and representative. Apparently, the words "convention" or "no convention" were written by



In this connection, three questions naturally arise: (1) What were the motives, real and alleged, of the General Assembly in submitting the question of calling a constitutional convention in the year 1823? (2) Was there a general popular demand for a convention? (3) Was the Constitution so unworkable, its defects so palpable and its operation so uneconomical as to inspire an unequivocal demand for reform?

None of the reasons for submitting the question of calling a convention to a referendum vote are indicated either directly or indirectly in the official literature, but they emerged with great clearness during the course of the campaign. The amendments demanded by the advocates of constitutional reform were the following: (1) The discontinuance of annual sessions and the substitution therefor of biennial or triennial sessions of the General Assembly; (2) Authorizing the Governor to call special or extraordinary sessions in cases of emergency or grave public necessity; (3) The abolition of the office of associate judge; (4) The removal of local officers by the circuit courts; (5) The abolition of the notorious divorce evil by conferring the authority to grant divorces on the circuit courts; (6) The reconstruction of the Supreme Court so as to bring it nearer to the people; and (7) Conferring on the General Assembly the authority to fix the time of its own meeting to suit the general convenience when required by public interest.

Aside from the editorial comment of the press, and the anonymous communications contributed to and disseminated by the weekly journals, the outstanding arguments which supplied the favorable and adverse propaganda of the campaign were an address by James B. Ray,<sup>15</sup> the senator from Franklin county; a brief but comprehensive dissertation contributed to the *Indiana Gazette* by a citizen who signed himself "Junius"; a sprightly Dialogue published in the *Indiana Gazette* and setting forth the arguments of the anti-conventionists with dramatic emphasis; a series of questions propounded to the candidates for the General Assembly from Knox county by an interested voter; and the suspicious interest displayed by the pro-slavery journals of Kentucky.

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the voter. Clerks of the circuit courts were required, when preparing the poll books, to rule two separate columns to tally the vote cast on the Convention proposition. The vote was counted by the inspectors and judges and certified to the clerk of the circuit court; the clerk was required to certify the result to the Secretary of State on or before the first Monday in December, 1823; and the Secretary of State was required to lay the result before the General Assembly on the second Monday of December, 1823. Any clerk who failed or neglected to certify the returns was subject to a fine of \$100.

15. James B. Ray was elected Governor in 1825 and served till 1831.

The campaign in favor of calling a constitutional convention was opened by James B. Ray at Brookville on February 12th by a speech to his constituents. In the course of this address, Ray explained the provisions of the act authorizing the electors to vote for or against the calling of a constitutional convention, and set forth with considerable particularity the "fatal defects" of the Constitution. In his judgment, the Constitution contained "a great number of defects, highly unsuitable to the meridian of Indiana, and the prosperity of her people; which if not expunged, must continue to oppress her citizens with enormous taxation, and keep her Treasury poor." Ten thousand dollars was spent annually "in fruitless legislation" and not infrequently on subjects that could be heard and remedied before the Judiciary at small cost.<sup>16</sup> The Constitution should be so amended as to provide for biennial sessions of the General Assembly, unless called in cases of emergency by the Governor. Impeachment trials conducted before the General Assembly had cost the State in some instances \$200 per day.<sup>17</sup> This was an extravagant practice and "an unpardonable misconception of policy." The constitution of the judiciary was "badly calculated to administer equal justice." The Supreme Court was "too remote from the people,"<sup>18</sup> an arrangement which "places in the hands of the rich a predominating power

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16. Ray probably refers to the practice of granting divorces by the General Assembly, a practice which prevailed under the Constitution of 1816 and consumed the time of the legislature on strictly judicial questions. The Constitution contained no provision relative to the granting of divorces and the question whether they were competent to act was frequently discussed. On January 26, 1818, at the 2d Session, an act was passed authorizing circuit courts to decree divorces (p. 226) and this act was amended in detail at the 6th Session (p. 96). Since the General Assembly continued to grant divorces, there must have been two agencies clothed with this function. The number of divorces granted by the General Assembly during the first 7 sessions was as follows: 1st session, 3; 2nd session, 0; 3d session, 1; 4th session, 1; 5th session, 2; 6th session, 5; 7th session, 1.

17. This estimate is somewhat exaggerated. According to the specific sums actually appropriated for the expenses of witness in attending impeachment trials during the first seven sessions, the expenditure of only \$335.80 was actually authorized. Impeachment trials involving any expenditure of public funds were as follows: 4th session, \$10 appropriated to each of 5 witnesses, and \$6 to one witness for attending the impeachment trial of Basil Prather, clerk of the circuit court of Washington county, \$56.00; 5th session, \$8 appropriated to each of 6 witnesses for attending the trial of Jacob Brookhart, a justice of the peace, \$48.00; 6th session, \$33 appropriated for one witness and \$17.20 to each of 4 witnesses and \$100 in a lump sum for expenses of the trial of Curtis Gilbert, clerk of the circuit court of Vigo county, \$201.80; 7th session, \$10 appropriated to each of three persons for professional services at the trial of John Tresenriter a justice of the peace, \$30.00. Total, \$335.80.

18. The Supreme Court consisted of 3 judges, having appellate jurisdiction only, except in capital cases (Const., Art. V, Sec. 1). The court was held twice each year at the seat of government (Laws, 1st Session, 3; Laws, 2d Session, 3). In 1819, the Supreme Court was given original jurisdiction in certain cases (Laws, 3d Session, 45).

over the poor.”<sup>19</sup> Senator Ray’s fundamental arguments, of which his concrete examples serve as illustrations, are, that by the amendments which he proposes, extensive savings would be effected in the public revenue, and that the administration of justice would be rendered more economical and democratic. So far as the writer is aware, the only comment which this address evoked was contained in an editorial of the *Indiana Gazette* of April 9. The *Gazette* not only opposed the call of a constitutional convention, but commented adversely on the amendments which Senator Ray proposed. The *Gazette* assumed that Senator Ray desired to institute a Supreme Court system like the one in operation in Ohio, whereby a session of the court would be held in every county of the State, twice each year; they thought that this scheme would be more expensive than the one which it was designed to replace, but they admitted that it might “produce some good berths for some attorneys, as additional judges, and for their friends, as clerks of the courts . . . .”

The most incisive argument in favor of calling a constitutional convention and the one which inspired the widest comment was set forth in an article published in the *Indiana Gazette* early in March by a citizen who signed himself “Junius.” This article advanced the arguments that the annual expense of the General Assembly was \$9,000;<sup>20</sup> that much of the time of a session was taken up in repealing acts of the previous session; that if the General Assembly met biennially, the laws would be as wholesome, more permanent, and the expense would be materially reduced. “Junius” also pointed out that according to the provisions of the Constitution each circuit court consisted of a president and two associate judges; as there were 49 counties in the State, there were, therefore, 98 associate judges whose compensation exceeded \$4,000 annually. These associate judges were supernumerary, unprofitable, darkeners of counsel, and a clog of justice and ought to be dispensed with. Besides, the Constitution provided that all civil officers were subject to removal by impeachment by the General Assembly, and there was no other way to remove a dishonest or delinquent official; the accused and the witnesses were obliged,

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19. *Indiana Gazette* (Corydon). February 26, 1823.

20. The annual expense of the General Assembly for the period between 1816 and 1823, so far as can be determined, is as follows: November, 1816 to November, 1817, \$7,325.12; November, 1817 to November, 1818, \$9,753.45; December, 1819 to November, 1820, \$7,918.33; November, 1820 to November, 1821, \$9,180.45; November, 1821 to November, 1822, \$8,558.41.



in some cases, to travel 150 or 200 miles; weeks of time were consumed in the trial of these cases and the probable cost was upwards of \$1,000 per session; whereas these cases could as well be investigated and disposed of by some local authority. "Junius" calculated that if the Constitution were amended in these three particulars it would save a needless expense to the State of \$10,000 or \$12,000 annually and would permanently improve the government. He concludes by imploring the press to institute a propaganda in behalf of a constitutional convention: "Ye indirect rulers of the people (I mean Editors of newspapers), what say ye to these considerations." The *Western Sun*, in an editorial comment of the same date, in responding to the query propounded in the "Junius" article said, "for ourselves, we are in favor of calling a convention . . . ." Moreover, they promised to print the act providing for the call of a convention as soon as it was received, and assured the public that their columns would be open for the discussion of the issue.<sup>21</sup> On April 23, both the act providing for a vote on the question of calling a convention and the 12-year clause of the Constitution were published with a comment by the *Indiana Gazette* to the effect that "our reasons for voting against a convention, if we vote at all, will be given hereafter."

The formal response of the *Gazette* to the challenge with which "Junius" had terminated his appeal was published on April 2. The *Gazette* was in favor of the retention of annual sessions, and on this point they cited the examples of the United States and of the other States. If the General Assembly met biennially and sat twice as long no economy would be effected. They suggested two remedies, however: To reduce the members to one-half their present number and maintain their salaries at the present level, and to curtail the session to one-half the time now employed. If the associate judges were abolished, there would be no one to attend to the probate business; if this duty were conferred on the circuit judges, the same expense would be involved as under the present arrangement. Although it was unsatisfactory in some respects, they considered the method of impeachment as satisfactory as any which might be devised.<sup>22</sup>

On July 12, Mr. B. V. Beckes of Vincennes, submitted a

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21. *Western Sun*, March 8, 1823. *Indiana Gazette*, March 19, 1823.

22. Since the organization of the government, according to the *Gazette*, only 4 cases of impeachment had been tried—2 clerks of circuit courts and 2 justices of the peace.



series of eight questions to the candidates for the General Assembly from Knox county. Among these questions was the following: "6th. Whether or not you are in favor of calling a convention, with your reasons at some length?" The three candidates were G. W. Johnston, James B. McCall and John Law, and all three were opposed to calling a convention at that time. G. W. Johnston admitted that the Constitution contained some objectionable provisions such as the election of inferior officers and the tedious and expensive method of impeachment, but the treasury was embarrassed, and, considering the pressure of the times and the enormous taxation, the calling of a convention would be like "burning down a house to roast an egg in the ashes." James B. McCall was likewise of the opinion that some useful amendments might be made. To the argument that biennial or triennial meetings of the General Assembly would give greater permanency to the laws, he replied that there would then be a longer duration of obnoxious laws." He suggested that a change might be made whereby the Governor would be given the discretionary power to convene the General Assembly whenever the public good demanded it; the saving of revenue in any case would depend on the length of the sessions. In reply to the argument that the judiciary should be reorganized to secure the rights of litigants by the facilitation of justice, and to promote economy by the abolition of the associate judgeships, he merely reminded his constituents that the good obtained might not be in proportion to the effort expended. Without assigning reasons, John Law said he was opposed to calling a convention at that time.<sup>23</sup>

The most striking and dramatic rejoinder to the arguments advanced by "Junius" are exploited in a Dialogue, published in the *Indiana Gazette* of July 16, 1823, and "Written by a Boy that is not yet entitled to vote, and whose education is only ordinary." The propositions of "Junius", including the economy to be effected by biennial sessions, associate judges "pruned from our judiciary, as unprofitable branches" and impeachment by local tribunals, are taken up seriatim and subjected to criticism.<sup>24</sup>

"Hale", an advocate of a convention, agreed with "Junius" that the Constitution ought to be amended in some particulars. Annual sessions he considered necessary to adjust the laws to the northwestern part of the State which was still in an undeveloped

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23. *Western Sun*, July 19 and 26, 1823.

24. The *dramatis personae* includes Upstart, Plainwit and Prudence. They conclude that "Junius" has blundered in soliciting the assistance of the newspapers.

condition;<sup>25</sup> the judiciary system should be new-modeled, but the associate judges should not be dropped, especially in criminal cases as a man should not be tried for his life before one judge. He thought a better method of impeaching justices of the peace should be devised and that the Constitution should be so changed as to empower the General Assembly to change the time of meeting to suit the general convenience whenever the interests of the State required it.<sup>26</sup> The Indianapolis Gazette thought that the arguments in favor of economy and retrenchment were greatly over-emphasized, as the warmest advocates of a convention were those in favor of high salaries.<sup>27</sup>

The arguments heretofore enumerated constitute the alleged reasons for calling a convention; the amendments advocated were designed to correct certain supposed defects and imperfections of the Constitution. These arguments constituted the working political capital of the convention propagandists. But there is tolerably conclusive evidence that the real reason for calling a constitutional convention was to eliminate from the Constitution the provision excluding slavery and involuntary servitude from the State. The pro-slavery journals of Kentucky displayed a keen, abiding and suspicious interest in the issue of this question. As early as March 19th, the Louisville Public Advertiser expressed the hope that the people of Indiana would vote in favor of a convention, and boldly advanced their sophistical pro-slavery theories. "We do not know that the advocates of a convention . . . have made any explicit declaration of their views on the subject of slavery." "Whether the introduction of slaves, to aid in clearing and cultivating their soil and in the performance of most other kinds of labor, would tend to increase their wealth and prosperity, and their relative weight in the confederacy, they are doubtless more capable to determine than we are. There is one important fact, however, which the opponents of the convention, seem to have entirely overlooked, viz., that the introduction of slaves into the new States, or the dissemination of them over a large tract of country, while it would enhance their value by

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25. The idea that annual sessions of the legislature are important for a new state was emphasized by the Indianapolis Gazette. Cited in Indiana Gazette of April 9, 1823.

26. Article by "Hale" in the Western Censor, quoted in the Indiana Gazette, April 16, 1823.

27. Indianapolis Gazette, cited in Indiana Gazette, April 9, 1823. The Indiana Gazette of May 21, acknowledged the receipt of a communication signed "Constitutional Advocate", but it contained no argument not already advanced.

opening new markets for them, and consequently ameliorate their condition, would not add one to the list of those in bondage . . . the less dense a population of that description may be, the higher they will be valued, and the better they will be treated . . . the question therefore, may be fairly construed as a question of policy, and not as one of freedom or bondage.’’ The Indiana Gazette, which resented this obnoxious extra-state propaganda, replied that ‘‘It would appear that a call of a convention in our State will be quite popular in Kentucky, at least, that it would be more popular with the Kentuckians, for Indiana to call a convention for the introduction of slavery than Kentucky to call a convention for the exclusion of it. We hope, however, that Indiana will be able to manage her concerns, without being under the necessity of introducing slavery to enrich the State.’’<sup>28</sup> A month later, the Gazette was still further convinced that slavery was the paramount motive of the advocates of a convention, and they were led to ‘‘shrewdly suspect, that slavery is the summum bonum of the prime movers of a convention; and however secret it may now be kept behind the curtain, if the vote should eventuate in a convention, it would burst forth in an impetuous torrent.’’ ‘‘A call of a Convention, we have no doubt, is quite a popular theme throughout Kentucky . . . because they would wish our Constitution so amended, as to admit the introduction of slavery into our State. It would afford such a fine market for their negroes’’, and attract slaveowners to Indiana. ‘‘It cannot be true that a majority of our citizens would desire the introduction of slavery.’’<sup>29</sup> The Indiana Farmer, in a post-election summary of the causes which conspired to defeat the call of a constitutional convention, expressed the following sentiments in regard to the dynamic influence of the slavery issue: ‘‘We cannot but view this, in a small degree, as expressive of the public sentiment, in regard to the introduction of slavery. Although considerable exertion has been made by the friends of a convention, to keep from view the subject of slavery, by alleging a variety of supposed objections to our Constitution, yet the real object of the proposed call could not be concealed . . . we firmly believe, that were it not for the hopes of introducing slavery, the law of last session would never have passed. Our opinion respecting this is confirmed by the discovery that nearly all who are anxious for a

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28. Indiana Gazette, March 19, 1823.

29. Indiana Gazette, April 9, 1823.



revision of our Constitution, and who are so expert in raising objections, are also zealous advocates of slavery.’<sup>30</sup> The Western Censor, in a similar appraisal, expressed the conviction that there was a class of citizens who “opposed the measure from a fear that, if it should succeed, the introduction of slavery might possibly be the consequence,”<sup>31</sup> and “Monitor”, a writer living in Lexington, Kentucky, who contributed an article to the Gazette on September 5th, says that the “avowed object” of calling a convention “was to introduce slavery” into the State.<sup>32</sup>

It is impossible to determine to what extent this pro-slavery sentiment influenced the legislators in voting for or against the bill authorizing the submission of the question of calling a constitutional convention to a referendum vote.<sup>33</sup> “Farmer”, a correspondent of the Indiana Farmer holding anti-slavery views, entertained the opinion that “so far as we are acquainted with the views of the Indiana Legislature, in authorizing a vote for a convention, the subject of slavery was not made a question; consequently the doctrine of diffusing slaves would not properly come under discussion.”<sup>34</sup> The General Assembly was, however, subjected to considerable criticism for presuming to submit the question of calling a convention. A correspondent of the Indiana Farmer, who signed himself “P”, in discussing the popular demand for a convention said: “It appears, from an impartial view of the matter, that the voice of the people was unheard in bringing this question before the electors, and that the legislature was premature in urging the investigation where it, alone, should originate.” There was no popular demand for the passage of the act and “we can look upon the origin of the measure, as arising only from factious motives, and unconnected with public good.”

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30. Cited in Indiana Gazette, September 3, 1823.

31. Cited in Indiana Gazette of September 10, 1823.

32. Indiana Gazette, September 10, 1823.

33. As the vote on final passage is not given for either House, an analysis is impossible. The Senate committee which reported the bill consisted of 5 members, representing Vanderburg, Warrick, Posey, Wayne, Randolph, Sullivan, Vigo, Green, Owen, Parke, Putnam, Jefferson and Jennings. In the House, the members from the following counties voted solidly in favor of rejecting the bill: Daviess, Martin, Sullivan, Jefferson, Jackson, Monroe, Switzerland, Gibson, Owen, Morgan and Green. The members from the following counties voted in favor of advancing the bill: Knox, Vigo, Jennings, Clark, Floyd, Washington, Orange, Lawrence, Crawford, Posey, Vanderburg and Boone and Anderson townships in Warrick, Spencer, Perry, Dubois, and Luce township in Warrick county, Randolph, Fayette, Ripley and Scott. The membership of the following counties divided: Harrison, 1 for rejection and 1 for advancement; Wayne, 1 for rejection and 2 for advancement; Franklin, 1 for rejection and 1 for advancement; Dearborn, 1 for rejection and 2 for advancement.

34. Cited in Indiana Gazette, April 9, 1823. Written in response to the pro-slavery article of the Louisville Public Advertiser, cited above.



The measure was "brought forward from motives unworthy of the representative chamber" and was largely inspired by the "idle suggestions of the moment."<sup>35</sup> "A Farmer", another correspondent of the *Indiana Farmer*, "contended that the General Assembly had no authority to call a convention "until they are informed by the Governor that it is the wish of the people" and "the people have neither directly nor indirectly desired the call of a convention . . . ." "Prudence", the protagonist in the famous Dialogue, pronounced the measure "an unconstitutional and disgraceful act"; insisted that the question should not be submitted "except a majority of the people should desire it; which could have been managed without authority from the legislature;" and asserted that "nobody was desiring" the submission of the question.<sup>36</sup> After the results of the election had become known, the *Richmond Intelligencer* expressed the sentiment that, "It is hoped that this decision of the people will convince the members of our last memorable legislature, that their constituents did not ask this measure at their hands."<sup>37</sup>

The formal arguments of the anti-conventionists were that the call of a convention would involve a serious risk, as no one could tell what sort of a constitution a convention would frame; the expense of a convention would be at least \$8,000, or \$10,000;<sup>38</sup> the evils and defects of the Constitution were not "of that magnitude, to justify such precipitancy,"<sup>39</sup> the General Assembly had just appointed Governor Hendricks to revise and codify the laws and hence all this labor and expense would be in vain;<sup>40</sup> the drafting of a new constitution was an imposition on "those who have emigrated from other States, under the present constitution, thinking that it would never be changed; at least not until the twelve years had expired,"<sup>41</sup> many people thought the act was unconstitutional as the Constitution provided for a vote every 12 years; others considered the year 1823 "an improper time," and even "those who voted for a convention were not very anxious that it should carry at this time."<sup>42</sup> Other anti-conven-

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35. Cited in *Indiana Gazette*, June 11, 1823.

36. *Indiana Gazette*, July 9, 1823.

37. Cited in the *Indiana Gazette* of September 17, 1823.

38. *Indiana Gazette*, February 26, 1823. The *Western Censor* also thought the expense would be out of proportion to the benefits to be derived. Cited in *Indiana Gazette*, September 10, 1823.

39. *Ibid.*, April 23, 1823.

40. Article by "A Farmer" in reply to "Farmer Jr.", in *Indiana Farmer*, cited in *Indiana Gazette*, June 11, 1823.

41. The Dialogue, *Indiana Gazette*, July 9, 1823.

42. See p. xxxiii for a discussion of this point.

tionists deprecated the instability which would be produced by holding conventions frequently. The 12-year period "gives reasonable scope to benefit by experience; foils the intrigues of factious demagogues and allays the capricious fervor of the disappointed office hunters, whose only hopes are matured by thundering clamor and continual change, "Frequent change of statutes is almost intolerable on the community," but frequent changes in the Constitution is "the direct road to anarchy." If the present call were successful, there would be annual applications for the call of a convention by "the discontented."<sup>43</sup> Aside from the slavery issue, it is doubtful whether the average voter considered a convention "pregnant with any very great danger to the welfare or liberties of the people."<sup>44</sup>

The question of calling a constitutional convention was probably more widely discussed in 1823 than at any time prior to 1849, and the defeat of the proposition was assured from the start. As early as March the Louisville Public Advertiser observed that a few of the Hoosier journals were "violently opposed" to a convention, but most of them were silent. The result of the vote they regarded as doubtful.<sup>45</sup> A month later, the papers were beginning to call attention to the pendency of this question and to emphasize its importance,<sup>46</sup> but many did "not feel sufficient interest, as yet, to enlist very deeply in the contest," and "from all appearances, the people of this part of the State, will vote against a convention."<sup>47</sup> By the middle of June, the question was being more widely discussed and people were becoming familiar with "what are termed" the "defects" of the Constitution and were "ready . . . to decide, by a large majority, that a call of a convention is inexpedient."<sup>48</sup> Opinion in Corydon seemed to be evenly divided.<sup>49</sup> Among the post-election reflections, the Indiana Republican expressed its pleasure "to find, that on this question, the people have not been unmindful of their dearest rights and best interests,"<sup>50</sup> and the Western Censor thought the defeat of the

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43. Indiana Gazette, April 9, 1823.

44. Article by "Hale" in Western Censor, cited in Indiana Gazette, April 16, 1823.

45. Indiana Gazette, March 19, 1823.

46. Indianapolis Gazette, cited in Indiana Gazette of April 9, 1823. The Indiana Farmer remarked that the subject of a convention "is pretty warmly discussed in the neighboring prints." Cited in Indiana Gazette, April 23, 1823.

47. Indiana Farmer, cited in Indiana Gazette, April 23, 1823.

48. Article in Indiana Farmer, signed "P", cited in Indiana Gazette, June 11, 1823.

49. Observation of "A friend to Good Offices", Indiana Gazette, July 9, 1823.

50. Cited in Indiana Gazette, September 3, 1823.

convention was "by no means decisive evidence that a majority of the people are satisfied with the constitution as it now stands."<sup>51</sup>

The general elections of 1823 were held on August 4th, Returns were received from 31 counties. The total vote cast in favor of a constitutional convention was 2,601 and the total number of votes cast in opposition was 11,991.<sup>52</sup>

**The Constitutional Referendum of 1828.**—After the unsuccessful campaign of 1823 no further attempt was made to submit the question of calling a constitutional convention to a referendum vote until the 10th Session of 1825-6.<sup>53</sup> During the year 1825, the question of calling a constitutional convention had been submitted to the electors of Pennsylvania and decisively defeated. Commenting on this unfavorable vote, the *Indiana Palladium*, speaking editorially, on November 11, 1825, admitted that the Constitution was defective and objectionable in many particulars, but conventions, they said, were always actuated by prejudices and predilections and although such an assembly might make some judicious amendments, "where is the security against extremes?" However, they did "not wish to be understood to be opposed to a revision of our Constitution whenever it becomes necessary." With the advent of Jacksonian Democracy, the first evidences of party alignment made their appearance and the unsavory scramble for offices began. Adherents of the Whig party, probably for selfish reasons, and public spirited men generally deprecated the introduction of the practice of rotation in office, advocated the retention of efficient and experienced men during good behavior, and regretted that the Constitution placed a limit on the tenure of office holding.<sup>54</sup> The changes in the Constitution which were still generally demanded included the removal of delinquent county officers by the circuit courts, biennial sessions of the General Assembly and viva voce voting. The "serious concern and expense" of legislative impeachments and the frequent interruption of legislative business by the "organization of courts of impeachment" and the belief that the "jurisdiction of the offences of county officers" might "with constitu-

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51. Cited in *Indiana Gazette*, September 10, 1823.

52. *House Journal*, 8th Session, 52. The election returns were submitted to the House by the Secretary of State on December 8, 1823. See Appendix II.

53. On January 13, 1824, during the 8th Session, a resolution was introduced in the Senate providing for the appointment of a committee to meet in May, 1824, to consider and report what laws had been passed since the commencement of the state government, infringing the provisions of the Constitution. The resolution was indefinitely postponed. *Senate Journal*, 148.

54. *Western Sun*, December 2, 1826.



tional authority, and political, and moral, and pecuniary advantages'' be transferred to the circuit courts; led to the adoption of a resolution by the Senate on January 4, 1826, just at the close of a lengthy impeachment trial, instructing the Judiciary Committee to inquire into the power and expediency of ''declaring by law, all county offices to be vacated by a conviction of the incumbent thereof, on a presentment or indictment, before the traverse jury in any circuit court, of a criminal offence that is punishable by confinement in the penitentiary.'' Although the resolution was adopted, no further action was taken.<sup>55</sup> The purposes of this resolution, of course, was to change one of the most tedious, costly and unsatisfactory provisions of the Constitution by a statutory enactment and without procuring a constitutional amendment, a project which was clearly impossible. A similar attempt to secure a constitutional change by simple statutory enactment was made at the following session. In that case the House adopted a resolution instructing the Judiciary Committee to ''inquire into the expediency of so amending the laws . . . that it shall be the duty of those doing county business to cause re-elections of Justices of the Peace, before the time of those in office expired . . . .'' On December 12, 1827, the committee reported ''that the evils complained of, grew out of a defect in the phraseology of the Constitution, and cannot be remedied by any legislative act . . . .''<sup>56</sup> On January 16, 1826, the proposal to revise the Constitution ''in part'' by submitting certain obnoxious parts . . . to the people'' and to constitute the members of the General Assembly members of a convention ''by special delegation'' was introduced and rejected.<sup>57</sup> At the 11th session of 1826-7 an attempt was made in each house to provide for the call of a constitutional convention. On December 14, 1826, the House adopted a resolution instructing the Judiciary Committee to coöperate with the Judiciary Committee of the senate to inquire into the expediency of preparing a bill authorizing the electors to vote on the question of calling a constitutional convention at the August election of 1827; an attempt was made to amend the resolution to provide for taking the vote at the August election of 1828. On December 16th, the committee reported unfavorably and the consideration of the measure was discon-

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55. Senate Journal, 10th Session, 137.

56. House Journal, 12th Session, 82.

57. See p. lxxxiii.



tinued.<sup>58</sup> The Senate bill was introduced on January 12, 1827, and was rejected at once by a vote of 6-15.<sup>59</sup> At the beginning of the 11th session the belief prevailed that the question of calling a constitutional convention would be submitted to the people. On December 15th, the day after he had introduced his resolution asking for the preparation of a bill submitting the question of calling a constitutional convention, Mr. Beekes of Knox county informed his constituents that, "The subject of a call of a convention it is thought will be submitted to the people." He then proceeded to discuss certain articles of impeachment which had been preferred against one of the justices of the peace of Floyd county, the trial of which would cost the State some thousands of dollars. "How unfortunate it is," he said, "that a more short and cheap method of removing those inferior officers is not admissible by our Constitution."<sup>60</sup> In a second letter, written after the legislature adjourned, in defending his conduct as a legislator, Mr. Beekes again returned to the question of calling a constitutional convention. If this had been done, and the Constitution so changed that the General Assembly would meet biennially or triennially, and inferior officers be removed by the courts of the country, the taxes would be reduced one-half in less than five years. The senator from that district, he said, had introduced a bill to remove inferior officers by courts, thinking that procedure would be permissible under the Constitution.<sup>61</sup> Mr. G. W. Johnston, in criticising Beekes' legislative record said: "Beekes wishes 'an expression of public opinion.' Upon what points? Some plausibility, without much reality!" Meantime a legislative review sent to the Lawrenceburg Palladium on January 5th, says a universal regret prevailed among the members of the General Assembly that no other than the present expensive mode of impeachment was constitutionally possible.<sup>62</sup>

At the 12th session of 1827-28, the strict and liberal constructionists, in conformity with the clearly expressed mandate of the Constitution, were able to unite consistently in submitting to the

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58. House Journal, 11th Session, 107.

59. Senate Journal, 11th Session, 155. This bill also provided that the electors should vote at the same time for or against an amendment to the Constitution of the United States so as to give the election of President, Vice-President and Senators directly to the people. With this exception the bill is identical with the measure of 1823.

60. Letter from Benj. V. Beekes to his constituents reviewing the legislation of the 11th session, Western Sun, December 30, 1826.

61. John Ewing.

62. Lawrenceburg Palladium January 13, 1827.

people the question of calling a constitutional convention. Measures were introduced and considered in both houses. On December 13, 1827, the House adopted a resolution instructing the Committee on Elections to prepare and report a bill enabling the electors to vote for or against the question of calling a constitutional convention at the the general election of 1828.<sup>63</sup> Before the House bill could be reported, a similar measure was introduced in the Senate on December 18. The bill passed the Senate on January 4 and the House on January 8.<sup>64</sup> The act of 1828 is substantially identical with the act of 1823 except that the act of 1828 expressly declared that the poll was opened on this question "in pursuance of the eighth article of the Constitution" and election judges and inspectors were required to put the question, "are you in favor of calling a convention or not?" to every voter who appeared at the polls.<sup>65</sup>

The question of calling a constitutional convention was now transferred to the electorate. There was no doubt as to the constitutionality of the measure, but the voters were so engrossed in national issues and the jealous magic of Jacksonian Democracy that the convention proposition aroused very little popular interest. In his review of the legislation enacted at the 12th session, Samuel Judah, the representative from Knox county, merely mentions without comment the fact that an act had been passed providing for a vote on the question of calling a constitutional convention.<sup>66</sup> The *Western Sun* of May 10, printed the act in full and referred to it as "highly important and meriting serious consideration." On May 31 and June 21, the *Sun* again reminded the voters of the submission of the question of calling a constitutional convention and dwelt on the importance of the question. Mr. Newton C. Jones, a candidate for the legislature from Bartholomew county, in a statement to his constituents, issued from Columbus, on May 22, expressed himself favorable to the call of a convention "since the Constitution provides that slavery never can be introduced." The amendments which should be made included the substitution of voting viva voce for voting by ballot; the abolition of the associate judgeships; the transference of impeachment trials to the circuit courts;

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63. House Journal, 12th Session, 95. The bill was never reported.

64. Senate Journal, 12th Session, 71, 78, 127, 129, 135, 160, 170, 176 and 202. House Journal, 265, 301, 307, 334, 342 and 473.

65. Laws, 12th Session, 22.

66. Open letter to the voters of Knox county, *Western Sun*, February 2, 1828.

biennial sessions, which would save \$10,000 annually; the reorganization of the Supreme Court to provide that it should consist of all the circuit judges sitting together, except the one appealed from, an arrangement which would save \$2,200 per year.<sup>67</sup> On June 14, the act was printed in full, without comment, in the *Lawrenceburg Palladium*. On July 19, the *Palladium* reminded the voters that they would be called upon at the August election to determine this question, and they then expressed the conviction that the time was "inauspicious" because of the agitation attending the Presidential election. "In fact, so little has been said about it, there are many who have yet to learn that they will be called upon to give a vote on the subject of a convention." They cautioned the voters to wait until 1840 and not "immaturely decide upon its revision in the heat of party strife." On August 2, two days before the election, they again reminded the voters of the vote on a constitutional convention. On July 3, the *Indianapolis Gazette* published the act and advocated the call of a convention. The amendments which should be made included the substitution of voting viva voce for voting by ballot as a "more independent mode"; the abolition of the associate judgeships, an office which produced an expense without any corresponding benefit; a less expensive mode of impeachment of local officials; and an increase in the salaries of the judges and other officers to procure abler men. "The prejudice of education," they said, "has great effect, and persons emigrating from different States would each wish to have some of the provisions of their different Constitutions incorporated in ours." On July 10, the *Indiana Journal* printed the act without comment.

Although the slavery question was not a predominating issue in this campaign, it was not allowed to escape without comment. Newton C. Jones, as we have seen, had no scruples about calling a convention "since the Constitution provides that slavery never can be introduced." The *Indianapolis Gazette* expressed the conviction that "With regard to the introduction of slavery, which might be a ground of fear in some, we think there need be no apprehension as independent of the compact which prohibits it, the people are too well convinced of the ruinous consequences growing out of the evil, laying aside their abhorrence of the practice, to give the least countenance to any such an attempt."<sup>68</sup>

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67. *Indianapolis Gazette*, June 5, 1828.

68. *Indianapolis Gazette*, July 3, 1828.



The election of 1828 was held on August 4. According to the consolidated returns of the Secretary of State, the total vote cast in favor of calling a convention was 10,092 and the total adverse vote was 18,633.<sup>69</sup>

**The Constitutional Referendum of 1840.**—At the beginning of the 13th session of 1828-9, the House Judiciary Committee, after examining the returns on the proposition of calling a constitutional convention, reported on December 8 that any further legislation on that question would be inexpedient<sup>70</sup> . . . an injunction which was observed by the House and ignored by the Senate. Both houses attempted unsuccessfully to secure the desired amendments by invoking the process which had been proposed at the 10th session. By virtue of the operation of that device, an amendment providing for biennial sessions of the General Assembly was to be drafted and submitted to the electors as an isolated proposition. Substantially identical resolutions were introduced in both houses.<sup>71</sup> The House resolution was laid on the table and not subsequently considered. The Senate resolution was amended to provide for the submission of the question of calling a constitutional convention to amend the Constitution to provide for biennial sessions of the General Assembly, the biennial election of senators and representatives, the impeachment and removal of justices of the peace by circuit courts, and the impeachment and removal of circuit judges and all other officers by the Supreme Court. The resolution as amended was then rejected by a vote of 8-13.<sup>72</sup>

At the 14th session constitutional measures were under consideration in both houses. On December 19, 1829, a resolution was introduced in the House instructing the Committee on Elections to report a bill authorizing the qualified electors to vote at the August election of 1829 on the question of calling a constitutional convention to amend the Constitution to provide biennial sessions of the General Assembly, and to transfer the impeach-

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69. Appendix A, Senate Journal, 13th Session. According to the individual county returns actually given in the report of the Secretary of State, 3,496 votes were cast in favor of a convention and 8,094 against; this includes 10 counties. Returns are given in the contemporary journals from 18 counties, including 4,644 votes in favor and 8,094 votes opposed. *Western Sun*, August 9 and 16, 1828. *Lawrenceburg Palladium*, August 9, 1828.

70. On December 5, the report of the Secretary of State showing the vote cast at the election was laid before the House and referred to the Judiciary Committee; the report of the committee was made on December 8. *House Journal*, 13th Session, 51 and 69.

71. See p. 387.

72. *Senate Journal*, 13th Session, 226 and 227.



ment of minor officers from the senate to the circuit courts. On December 21, the resolution was adopted by a vote of 41-17 after it had been amended to instruct the Committee on Elections "to inquire into the expediency" of reporting the contemplated bill, and in addition to the two amendments designated, the convention when met was "to make such other amendments . . . as may be deemed necessary." A month later, on January 22, the committee reported that in their opinion it would be inexpedient to legislate upon the question at that time and the consideration of the resolution was accordingly discontinued.<sup>73</sup> On December 22, the day following the adoption of the House resolution,<sup>74</sup> a resolution was introduced in the Senate reviving the plan of submitting drafted amendments to the people and providing for their subsequent incorporation in the Constitution. This resolution met with scant favor and was promptly rejected by a vote of 9-13.<sup>75</sup> On January 23, the day following the final rejection of the House resolution, a bill was introduced in that Chamber providing for a revision of the Constitution; an attempt to indefinitely postpone the bill was lost by a vote of 25-32; on January 29, the consideration of the bill was discontinued, and on December 13, 1830, at the beginning of the 15th session, the bill was reported as unfinished business, and on recommendation of the Judiciary Committee it was laid on the table.<sup>76</sup> The only constitutional measure considered at the 15th session was the proposal to authorize the electors to vote on the proposition of constituting the General Assembly of 1831-2 a convention for the purpose of amending the Constitution to confer the power of impeachment on circuit courts and providing for biennial sessions of the General Assembly except in cases of emergency, which was rejected by a vote of 10-11.<sup>77</sup> At the 16th session, on December 27, 1831, the resolution which had been proposed and rejected at the 14th session, providing for the submission of pre-drafted amendments to the electors, was again brought forward. An attempt was made to amend this resolution to instruct the Committee "to inquire into the constitutionality and expediency" of making the proposed amendments, but the motion was rejected by a vote of 12-17. The original resolution

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73. House Journal, 14th Session, 157, 168 and 421.

74. *Supra*.

75. See p. 136.

76. House Journal, 14th Session, 435 and 540; 15th Session, 85, 86 and 117.

77. See p. 435.

was then rejected by a vote of 4-25. A substitute was then proposed instructing the Judiciary Committee "to inquire into the expediency" of authorizing the qualified electors to vote at the August election of 1832 on the question of calling a convention to amend the Constitution to provide for biennial sessions and to transfer cases of impeachment to the circuit courts, but was rejected by a vote of 11-18.<sup>78</sup>

At the 17th session only one constitutional measure was under consideration. On January 22, 1833, a resolution was introduced in the House instructing the Judiciary Committee "to inquire into the expediency" of authorizing the qualified electors to vote at the August election of 1833 on the question of calling a constitutional convention to revise the Constitution. By the same measure, "certain sections" of the Constitution "that ought to be revised" together with "the proposed amendments" were recommended to the people. These amendments included the biennial election of representatives and the quadrennial election of senators; the election of the Governor for a term of 4 years, rendering him ineligible to serve longer than 8 years out of any 10 years; abolishing the office of associate judge; extending the term of justices of the peace to 7 years, and constituting them a county court to transact all county business; substituting voting viva voce for voting by ballot; providing for the application of all military exemption funds and fines to the support of common schools instead of the support of county seminaries; and consolidating the offices of clerk and recorder in all counties. The resolution was rejected at once without a vote.<sup>79</sup>

At the 18th session, the only constitutional measure under consideration was a resolution of instructions, introduced in the House on December 23, 1833, directing the Judiciary Committee "to inquire into the expediency" of authorizing the qualified electors to vote at the August election of 1833 on the question of calling a constitutional convention. On December 28th, the committee submitted an unfavorable report, and although an attempt was made to submit the resolution to a select committee with instructions to return a favorable report, the House was indisposed to continue the consideration of the measure.<sup>80</sup>

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78. See p. 147. A proposed amendment to the substitute resolution authorizing the electors to "express their opinion as to the propriety of so amending the constitution as to give to Indians the rights and privileges of citizens" was rejected by consent. Senate Journal, 16th Session, 148.

79. House Journal, 17th Session, 467.

80. House Journal, 18th Session, 156, and 207.

At the 20th session of 1835-6 a determined effort was made to submit the question of calling a constitutional convention. A joint resolution was introduced in the Senate on December 23, 1835; on December 24, the resolution was laid on the table; on December 28, the resolution was under consideration in the Committee of the Whole; on December 29, the resolution was again laid on the table where it reposed until January 7, when it was committed to a select committee. This committee, on February 1, recommended that the resolution be postponed until the first Monday of December, 1836, which report, after consideration, was concurred in by the Senate.<sup>81</sup> On December 21, 1836, at the 21st session a resolution was introduced in the Senate providing for the call of a constitutional convention. On January 6, the resolution was advanced to second reading and laid on the table.<sup>82</sup>

At the 22d and 23d sessions no constitutional measures were under consideration. Apparently the General Assembly had determined to wait until the 12-year period prescribed by the Constitution had expired. Accordingly, at the 24th session of 1839-40, a bill was introduced in the House on January 23, 1840, authorizing the qualified electors to vote at the August election of 1840 on the question of calling a constitutional convention. The bill passed the House on February 4, and the Senate on February 12 and was signed by the Governor on February 22.<sup>83</sup> This act is identical with the act under which the call of a constitutional convention was authorized in 1828 with the exception of one important addition. "For the purpose of more expressly calling the attention of the people of the State, to the propriety of voting for or against" the proposed convention, the county sheriffs were required to give notice of the pending election for 6 weeks, "expressly calling the attention of the people of the State, to the propriety of voting for or against" the proposed convention, since a convention would not be convened unless a majority of all the votes given at the election were in favor of calling a convention, and reminding the voters of the fact that they "will not have the right to vote for or against another convention for the space of twelve years." This injunction relative to election notices was actually carried out.<sup>84</sup>

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81. Senate Journal, 20th Session, 331, 360, 368, 374, 407 and 590.

82. Senate Journal, 21st Session, 197 and 289.

83. House Journal, 24th Session, 349, 408, and 628. Senate Journal, 324, 326, and 356. Laws, 24th Session, 1839, 21.

84. Western Sun and Advertiser, August 8, 1840.



The national and personal issues of the Log Cabin and Hard Cider campaign of 1840 so completely engrossed the attention of the electors and the party journals that the call of a convention was quite completely ignored. For example, the Tri-Weekly Journal of Indianapolis, one of the most alert and enterprising papers in the State, did not refer to the convention question in a single issue of the year. The Indianapolis Sentinel in its issue of May 16, 1849, attributed the defeat of the proposition to the "course of the Whigs" and the "lamentable condition of the public mind." Speaking six years later, the Goshen Democrat said: "The political whirlwind of 1840, swallowing up in its vortex everything else, prevented a proper expression of the wishes of the people on this subject."<sup>85</sup> The result of the election might have been confidently predicted from the beginning. It was a campaign of indifference. Returns are available from 70 counties. Out of a total of 75,380 votes cast on the proposition, 12,666 were cast in favor of a convention and 62,714 opposed. The total vote cast for Governor at the same election was 116,761. The only county in the State which returned a majority in favor of a convention was Steuben.<sup>86</sup>

**The Constitutional Referendum of 1846.**—After the defeat of the constitutional question in 1840, the proposition was not subsequently revived until the 26th session. On December 29, 1841, a resolution was introduced in the House requesting the Judiciary Committee to "enquire into the constitutionality and propriety" of enacting a law authorizing the calling of a constitutional convention. This resolution was immediately rejected,<sup>87</sup> and a similar resolution proposed in the Senate on December 5, 1843, at the 28th session, was summarily disposed of.<sup>88</sup> At the same session, a question of fundamental importance was advanced in the House on December 13, only two weeks after the rejection of the resolution providing for calling a convention. This resolution was designed to instruct the Judiciary Committee to "enquire into the constitutionality" of convoking a constitutional convention "at any other time than once in every twelve years."<sup>89</sup> The resolution was immediately rejected and the subsequent action

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85. Cited in Indianapolis Sentinel of July 25, 1846.

86. Senate Journal, 25th Session, 41. Documentary Journal, 1840, p. 217. Western Sun and General Advertiser, August 8, 1840.

87. House Journal, 26th Session, 234.

88. Senate Journal, 28th Session, 9.

89. House Journal, 28th Session, 110.

of the General Assembly shows that they reposed little confidence in this theory. The measure which met with greatest favor at the 28th session was introduced in the House on January 10, 1844. This bill authorized the qualified electors to vote on the question of calling a constitutional convention at the general election of 1844. The bill was advanced to second reading but was rejected by a vote of 33-57.<sup>90</sup> A similar measure was introduced at the 29th session, on December 11, 1844. This bill was reported by a select committee of three,<sup>91</sup> and was referred to the Judiciary Committee for consideration;<sup>92</sup> and on December 23 this committee reported favorably. In the course of its consideration, an unsuccessful attempt, lost by a vote of 40-49,<sup>93</sup> was made to recommit the bill to the Judiciary Committee with instructions to so amend the bill as "to submit the isolated question of biennial sessions of the General Assembly, and not interfere with any other constitutional provisions, and that the time of meeting of the General Assembly to be on the 1st Monday of January, and that all elections shall be *viva voce*." A second proposed amendment designed to provide triennial sessions of the General Assembly was also lost. The bill was then referred to the Judiciary Committee and apparently was never reported back.<sup>94</sup>

Finally, at the 30th session, an attempt to submit the question of calling a constitutional convention was successful. On December 5, the Senate adopted a resolution authorizing the appointment of a select committee to inquire into the expediency of calling a constitutional convention to amend the Constitution and more particularly to provide biennial sessions of the General Assembly. On December 12, the select committee reported the bill as instructed; on December 15, the bill was referred to the Judiciary Committee,<sup>95</sup> and on December 29, they returned an unfavorable report recommending indefinite postponement. Although the House bill<sup>96</sup> was now before the Senate, the recommendation of the committee was ignored, and on January 12, by a vote of 24-22, the bill was advanced to

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90. House Journal, 28th Session, 467 and 509.

91. All Whigs.

92. The Judiciary Committee consisted of 4 Whigs and 3 Democrats.

93. Opposed to amendment, 18 Democrats and 22 Whigs; in favor, 23 Democrats and 30 Whigs.

94. House Journal, 29th Session, 74, 85, 146, 200-2.

95. Seven Whigs and Four Democrats.

96. *Infra*.

engrossment,<sup>97</sup> and on January 13, four days before the passage of the House bill by the Senate, the bill was passed by a vote of 30-14.<sup>98</sup> On January 17, the House laid the bill on the table.<sup>99</sup> The House bill was more successful. On December 10, 1845, the House adopted a resolution instructing the Judiciary Committee to report a bill providing for taking the sense of the qualified electors at the election of August, 1846, on the question of calling a constitutional convention. The bill was reported on December 15; it passed the House on December 18, and the senate on January 17, 1846, by a vote of 31-14,<sup>1</sup> and was approved on January 19.<sup>2</sup>

The campaign of the year 1846 was complicated by the issue growing out of the Mexican controversy and the occupation of Oregon. The attempt in Indiana seemed to be a local symptom of a Nation-wide demand of constitutional reform, both State and Federal.

In spite of absorbing national issues, therefore, the question of calling a constitutional convention received a more candid consideration than similar attempts in 1828 and 1840. The Indiana State Sentinel, the most influential of the Democratic journals, advocated the call of a convention as highly salutary to the welfare of the State. They had long been convinced that the Constitution could be improved and "should have urged the subject upon the attention of the people more strenuously and frequently than we have done, but for the unfortunate result of a similar proposition in 1840, when, through misunderstanding, as we believe, the people decided against such a convention by a large majority." They considered it "one of the most important questions which the people will be called upon to decide." As early as the beginning of April they observed that "several of the most influential papers, both Whig and Democratic, advocate the Convention, and propose various amendments."<sup>3</sup> The Madison Cour-

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97. In favor of advancement, 17 Democrats and 7 Whigs; opposed, 6 Democrats and 16 Whigs.

98. In favor of passage, 19 Democrats and 11 Whigs; opposed, 4 Democrats and 10 Whigs.

99. Senate Journal, 30th Session, 45, 48, 76, 103, 267, 511 and 536; House Journal, 563 and 592.

1. In favor of passage, 19 Democrats and 12 Whigs; opposed, 4 Democrats, and 10 Whigs.

2. Electors were required to write or print on their ballots the words "for a convention" or "against a convention." Sheriffs were required to give six weeks' notice of the election on this question. For election notice promulgated in Cass county, see Logansport Telegraph, June 27, 1846. House Journal, 30th Session, 100, 148, 176, 192, 612 and 638; Senate Journal, 163, 183 and 611; Laws, 30th Session, 97.

3. Issue of April 2, 1846.



ier was lukewarm on the subject but open to conviction. While admitting that many people were in favor of calling a convention, they stated their own position by saying that, "At present we are easy on the subject—We wait for reasons."<sup>4</sup> Among the other papers which favored a convention were the Lafayette Courier, the Vincennes Gazette and the Goshen Democrat, which latter paper had "on all occasions, urged its propriety."<sup>5</sup> Among the papers which were rather equivocal but favorably inclined toward a convention, were the St. Joseph Register and the Ft. Wayne Times. Of the public meetings called to consider and act upon this question, the proceedings of only two have been preserved in the contemporary journals. On March 14, 1846, a meeting was held at Marr's school house, in Marion county, which went on record in favor of a convention and proposed a series of amendments which ought to be incorporated in the new constitution.<sup>6</sup> Some time during the month of May, the people of Washington county assembled and approved of the act of the General Assembly for 1845-6 in calling a convention to amend the Constitution. They believed that "an experience of thirty years, and the radical improvement made in the science of government during that time, as well as the great changes that have occurred since the adoption of the present constitution, in the population, the agricultural, commercial, manufacturing, and mechanical interests of the people, render such a call highly proper and desirable."<sup>7</sup>

The amendments proposed by individual citizens, journals and public meetings were as follows: (1) Biennial sessions of the General Assembly,<sup>8</sup> which the Goshen Democrat estimated would save \$25,000 annually.<sup>9</sup> Biennial or triennial sessions.<sup>10</sup> (3) Triennial session.<sup>11</sup> (4) Abolition of the associate judgeships to reduce court expenses.<sup>12</sup> (5) Appointment of associate judges and justices of the peace.<sup>13</sup> (6) Remodeling of the judiciary and adequate compensation for judges. (7) The abolition of the existing probate system and the creation of probate circuits with

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4. Issue of April 11, 1846.

5. Statement of Democrat, cited in Sentinel of July 25, 1846.

6. Sentinel, March 19, 1846.

7. Ibid., May 28, 1846.

8. Recommended by meeting held at Marr's school house on March 14. Sentinel, March 19, 1846.

9. Cited in Sentinel, July 25, 1846.

10. Recommended by the Vincennes Gazette. Cited in Sentinel of May 14, 1846, in a quotation from the St. Joseph Register.

11. Jefferson, Jr., in Madison Courier of February 21, 1846.

12. Marr's school house meeting and Vincennes Gazette.

13. Jefferson, Jr., *supra*.

competent officers elected by the people.<sup>14</sup> (8) The delegation of local legislation to the county authorities.<sup>15</sup> (9) Abolition of local or special legislation.<sup>16</sup> (10) Prohibiting the General Assembly from granting divorces and thus “constructively usurping judicial power.” (11) Fixing the membership of the House at 50 and the Senate at 25.<sup>17</sup> (12) Fixing permanently the membership of the General Assembly.<sup>18</sup> (13) Requiring representatives to be 25 years of age and senators 30. (14) Fixing legislative sessions at 6 weeks and the compensation of members at \$2.<sup>19</sup> (15) Fixing the gubernatorial term at 4 or 5 years and rendering the Governor ineligible to succeed himself.<sup>20</sup> (16) Fixing the senatorial term at 4 years and the representative term at 2 years. (17) Provide that all fines shall be applied to the support of common schools instead of county seminaries.<sup>21</sup> (18) Prohibiting the General Assembly from creating any State debt except in cases of war or invasion without submitting the question to the electors.<sup>22</sup> (19) Prohibiting the creation of a State debt without providing for the annual interest and the payment of the principal within 20 years. (20) Prohibiting the renewal or creation of any charter for banking purposes, after the expiration of the present bank charter. (21) In all charters granted, require the insertion of an individual liability clause. (22) Abolition of the poll tax, letting property pay all the tax instead of heads. (23) The election of all judges and State officers by the people. (24) The establishment of a system of free common schools. (25) The extension of the suffrage to white males, 21 years of age, except idiots and lunatics, who were actual residents. (26) The abolition of licenses for trades and professions and of all religious tests, and prohibiting imprisonment for debt in all forms. (27) To fix the amount of property which should be exempt from execution and to prohibit the passage of all relief laws. (28) To guarantee to females the absolute control of their own property.<sup>23</sup> (29) Changing the time of holding general elections from August to October, except in Presidential years when the elections should be held on the same

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14. Goshen Democrat, *supra*.

15. Marr's school house meeting, *supra*.

16. Jefferson Jr., and Goshen Democrat, *supra*.

17. Marr's school house meeting, *supra*.

18. Goshen Democrat, *supra*.

19. Marr's school house meeting, *supra*.

20. *Ibid.*, and Jefferson, Jr., *supra*.

21. Marr's school house meeting, *supra*.

22. Lafayette Courier, cited in Sentinel, May 14, 1846.

23. Goshen Democrat, *supra*.

date. August was the busiest month in the year for farmers and this worked a hardship on that class of voters.<sup>24</sup> (30) To place constitutional restraints upon the growth of monied monopolies.<sup>25</sup>

The results of the campaign in favor of a constitutional convention were measurably successful. The election of that year was held August 3. Returns were received from 76 counties. 59,591 votes were cast on the subject of calling a constitutional convention. Of this number 32,468 electors voted in favor of a convention and 27,123 were opposed. The total vote cast for Governor at the same election was 126,449, and the total number of polls according to the official enumeration was 126,969.

It will be observed that the total vote cast on the subject of calling a constitutional convention was less than half of the total electorate of the State, and the majority in favor of a convention was only 5,345. The Constitution provided that "if there should be a majority of all the votes given at such election in favor of a convention" the General Assembly was required to provide for the election of delegates to a convention. As soon as the results of the election were known, an animated controversy arose as to the power of the legislature to provide for the call of a convention. The three questions which were most hotly contested were the legal or constitutional power of the General Assembly to submit the call for a constitutional convention at any other time than the year on which the 12-year period expired; what "majority" was required to call a convention; and had the General Assembly the "right to prevent the convention by refusing to pass the necessary laws." The Indiana Sentinel, one of the leading advocates of a convention, discussed these questions editorially on August 29, with great skill and assurance. They assured their readers that they were "sustained by able lawyers whom we have consulted on the subject." Article 8, they contended, "does not confer, enlarge, or restrict any right of the people to assemble in convention, by delegates, for the purpose of altering or amending the form of government. It is merely *directory*, as a mode of proceeding, and a matter of convenience." In this contention they were ably sustained by the Brookville Democrat who subscribed to the doctrine that the 12-year section "contains an obligation, declaring what shall be done; but at the same time it does not prohibit the holding of elections oftener than once in twelve years for the same purpose." In defense of this position they quote Article

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24. St. Joseph Register, and Ft. Wayne Times, cited in Sentinel, May 14, 1846.

25. Jefferson, Jr., *supra*.



I Section 2, to the effect that the people “have, at all times, an unalienable and indefeasible right to alter or reform their government in such manner as they may think proper.”<sup>26</sup> When the proposed measures were under consideration in the General Assembly, Senator Read<sup>27</sup> maintained that the people had an undoubted right to amend their Constitution at any time; Senator Stewart favored a convention, but he maintained that the General Assembly had no constitutional authority to call a convention at any time except the 12-year periods, but he maintained that the people were not similarly bound and could call a convention at any time, although he does not indicate the manner or the agency by which the convention was to be summoned.<sup>28</sup> The most elaborate arguments were advanced by the contestants in the House. These arguments were sustained by an imposing array of citations. Mr. Secrist<sup>29</sup> held that the 12-year clause, if strictly construed, was a nullity, and he advanced the argument formerly set forth by the Brookville Democrat that “the people, by no constitutional provision, could take from themselves, or restrain, or limit, their right to alter or amend their Constitution.” However, he was opposed to calling a convention at that time as the excitement which had been aroused would result in the rejection of the constitution when drafted and the needless expense involved would injure the prospects of future amendments. Mr. Yaryan adhered tenaciously to the 12-year provision and considered the whole proceeding illegal. Mr. Porter thought the 12-year provision was not binding, but for expediency’s sake he thought it ought to be complied with.<sup>30</sup> The Weekly State Journal of December 30th, speaking of the bill which was then pending in the Senate, observed that a “diversity of opinion exists as to the propriety of its becoming a law,” and contended that the 12-year period should be strictly observed. “It is contended that, inasmuch as the above article does not, in so many words, interdict any other mode, the legislature may, at any time, direct a poll to be opened . . . .” This, they held to be “a forced inference, and not warranted by a fair construction of that instrument.” The Brookville Democrat charged the Whig editors generally with standing by the strict construction of the 12-year provision,<sup>31</sup> but in his remarks in the Senate,

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26. Quoted in Sentinel, September 19, 1846.

27. A Democrat.

28. Stewart differed from his political friends on this question.

29. Secrist, a Democrat, differed from his political friends.

30. Julian held to the 12-year section; Dunham thought it was not binding.

31. Cited in the Sentinel of September 19.

Mr. Read assured his colleagues that in his district the convention issue was not made a party question but was voted for by Whigs and Democrats alike.<sup>32</sup>

The second question raised was, "what majority is required to call a convention?" To this question three answers were given. Some commentators thought it was a majority of all the votes given at the August election; others, that it meant a majority of all the votes given for Governor; and still others that it meant a majority of all votes given upon the question of calling a convention. The *Sentinel* advocated the theory that the issue was determined by a majority of the votes cast on the question of calling a convention.<sup>33</sup> This, also, was the position taken by the *Madison Democrat*.<sup>34</sup> On the other hand, the *Weekly State Journal*,<sup>35</sup> Senator Stewart,<sup>36</sup> Mr. Yaryan and Mr. Porter<sup>37</sup> contended that an affirmative vote of the entire electorate was demanded.

The third question raised was whether the General Assembly had the right to prevent a convention by refusing to pass the necessary laws. The conclusion of the *Sentinel* was that "the legislature may refuse to obey the instructions of the people and the injunctions of the Constitution, but in such a case the people may proceed to hold the convention and adopt such rules and regulations as the exigency may call for . . . . The call for a convention is as decided and peremptory by the vote at the late election, as if every elector in the State had voted upon the question."<sup>38</sup> This as we have seen was the theory of Senator Stewart; and the same theory was also advanced by the *Indiana Democrat*.<sup>39</sup>

It is an interesting fact that slavery was touched upon as one of the issues that might possibly arise if a convention were called, although the Ordinance of 1787 was relied upon as a barrier to prevent its introduction.<sup>40</sup> Aside from biennial sessions of the General Assembly, impeachment of minor officers by the circuit courts, a provision inhibiting the General Assembly from borrowing money and granting divorces, the addition of fines for infractions of the penal laws to the common school fund, the issuance

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32. *Journal*, January 8, 1847.

33. Issue of August 29, 1846.

34. Cited in the *Madison Courier* of September 19.

35. Issue of December 30, 1846.

36. *Journal*, January 8, 1847.

37. *Ibid.*, January 13.

38. Issue of August 29, 1846.

39. Issue of September 4, 1846.

40. *Journal*, January 13, 1847.

of bills of credit, which had been demanded out of doors, the only new amendments proposed were alterations in the Constitution depriving the Governor of the veto power, altering the provisions relative to the districting of the State for legislative purposes, the imposition of a limit on the size of counties which were getting too small,<sup>41</sup> the prohibition of special legislation and uniform methods of doing county business.<sup>42</sup>

The character of the discussion which transpired in the General Assembly of 1846-7 has already been anticipated. In his biennial message, delivered on December 7, 1846, Governor Whitcomb gave the result of the poll on the question of calling a constitutional convention and referred to the fact that "the aggregate number of votes returned as having been cast upon that question, is less than one-half of the number of voters who attended the polls and voted upon other questions, and that from thirteen counties no returns whatever upon that question have been received."<sup>43</sup>

In the General Assembly, the question of proceeding with the call of a constitutional convention was largely partisan in character. The opportunity afforded the electors of expressing themselves on the question of calling a convention had been extended by a General Assembly which was predominantly Democratic;<sup>44</sup> the proposition was therefore regarded as a Democratic measure. The General Assembly which convened in 1846 was slightly Whig in both chambers,<sup>45</sup> and, on the authority of a somewhat doubtful plebiscite, the Whigs declined to mature the measure which had been bequeathed to them by the Democrats. However, a bill providing for the election of delegates to a constitutional convention was introduced on December 10, in both houses. The House bill was introduced by a Whig and the Senate bill by a Democrat. In the House, the constitution bill was referred to a select committee consisting of 6 Democrats and 6 Whigs which had been appointed to consider that part of the Governor's message relating to a constitutional convention.

While the House bill was under consideration by the select committee, a resolution was introduced in that Chamber on Decem-

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41. Journal, January 8, 1847.

42. Indiana Democrat, September 4, 1846.

43. House Journal, 31st Session, 22.

44. In the 30th General Assembly there were 25 Whigs and 25 Democrats in the Senate and 45 Whigs and 55 Democrats in the House. (Indiana State Journal, August 27, 1845.)

45. Senate, 24 Democrats and 26 Whigs; House, 45 Democrats and 55 Whigs.



ber 28, requesting the Governor to communicate his opinion to the House "whether the vote given under the circumstances will authorize the legislature to provide by law for the election of members of such convention, the number thereof, and the time and place of meeting." The resolution was laid on the table by a vote of 52-33.<sup>46</sup> On January 1, the committee submitted a majority and two minority reports. The majority report, which was signed by one Whig, the author, and five Democrats, recommended passage. The first minority report was signed by five Whigs and recommended indefinite postponement for the reasons that the proposition of calling a constitutional convention had not been indorsed by a majority of all the votes cast at the election; in fact "only a small fraction over one-fourth of the legal votes of the people were cast in favor of calling a convention," and from thirteen counties no returns were received at all. To call a convention with "no better warrant than the meagre vote of last August" would be "a revolutionary proceeding, calculated to establish a precedent of dangerous tendency," which "in its ultimate consequences" would "weaken the conservative influence of the constitution . . . ." In addition to this consideration the committee considered it good policy "in cases where legitimate doubts exist as to what is the wish of the people, that their servants should not take the responsibility of acting precipitately upon assumed or questionable views, when, by referring such doubts back to the people themselves, they can, without unnecessary or injurious delay, dispel them by another and more direct expression of the popular vote." This plan they recommended as a wise "mode of dissolving doubts . . . ." Another argument urged by the committee, which should have some influence "in abating the hot haste" of the partisans of a convention, was that the apathy evinced by the small popular vote proved that the alleged defects of the constitution had not grown intolerable. The second minority report, which was signed by one Democrat, set forth the theory that the General Assembly was competent to call a constitutional convention oftener than once in twelve years but that the meagre vote cast at the last preceding election had not authorized them to do so.

The debate on this bill has already been given. The question was fought to an issue rather quickly. The bill was under consid-

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46. In favor of laying on the table, 35 Democrats and 17 Whigs; opposed, 30 Whigs and 3 Democrats. House Journal, 31st Session, 214.

eration on January 4, 5, and 6 and on the latter day it was indefinitely postponed by a vote of 61-35.<sup>47</sup>

The Senate bill, which was introduced on the same day, was referred to a select committee of twelve,<sup>48</sup> who returned a favorable report on December 18. The report was laid on the table by a vote of 29-18<sup>49</sup> and 100 copies were ordered printed for the use of the Senate. On December 30, the bill was taken up for consideration; an unsuccessful attempt was made to refer the bill to the Judiciary Committee with instructions to inquire "whether a convention to amend the Constitution has been called by the people;"<sup>50</sup> after being twice postponed, the bill was again taken up for consideration on January 5. At this juncture two amendments were proposed. The first amendment was designed to resubmit to the people the question of calling a constitutional convention "inasmuch as serious doubts exist whether such convention was called at the last election." The second amendment was intended to authorize an inquiry into the expediency of providing for the election of delegates "before a majority of all the votes cast at the election shall have been given in favor of a convention," and also to inquire into the probable cost of a convention. Both of these amendments were rejected and the bill was advanced to engrossment by a vote of 24-21, and, under suspension of the rules, was passed by a vote of 24-22.<sup>51</sup> On January 22, the House indefinitely postponed the bill by a vote of 58-37.<sup>52</sup>

On January 15, the day after the President had decided that the senate bill had passed, a joint resolution was introduced in

47. On the motion to indefinitely postpone, 48 Whigs and 13 Democrats voted in favor and 31 Democrats and 4 Whigs against. House Journal, 31st Session, 43, 53, 66, 68, 223, 278-285, 319, 333 and 357.

48. The committee consisted of 7 Whigs and 5 Democrats; the vote on reference was 28 to 21. In favor of reference, 25 Democrats and 3 Whigs; opposed, 21 Whigs.

49. In favor of tabling, 23 Democrats and 6 Whigs; opposed, 18 Whigs.

50. The vote on reference was 24 to 24. In favor of reference, 22 Whigs and 2 Democrats; opposed, 23 Democrats and 1 Whig.

51. In favor of passage, 21 Democrats and 3 Whigs; opposed, 21 Whigs and 1 Democrat. A constitutional question was raised on this vote as to whether it was necessary that "a majority of all the members elected to both branches of the General Assembly" should vote to insure the passage of the bill. On January 14, the President decided that the bill had passed. An appeal was taken from this decision but was laid over and on January 20 the bill was reported to the House. Just prior to the passage of this bill a resolution was proposed by virtue of which the question of calling a constitutional convention was to be resubmitted to the people at the August election of 1847. The resolution was eliminated by invoking the previous question. Senate Journal, 31st Session, 389.

52. In favor of postponement, 48 Whigs and 10 Democrats; opposed 33 Democrats and 4 Whigs. For consideration of the bill see Senate Journal 31st Session, 36, 45, 94, 220, 224, 274, 294-5, 388-91, and 448; House Journal, 561 and 620.

the Senate which was designed to revive the law by which the question of calling a constitutional convention had been submitted to the people in 1846, and to provide for its resubmission in 1847. The resolution was referred to a select committee,<sup>53</sup> reported favorably on January 20, and advanced to engrossment by a vote of 29-20,<sup>54</sup> but was not subsequently considered.<sup>55</sup>

**The Constitutional Referendum of 1849.**—The attempt in 1846-7 to provide for the election of delegates to a constitutional convention on authority of the doubtful mandate of the preceding election, after a hotly contested and spectacular fight, had ended in failure. The demand for constitutional reform had not abated, however, and was seriously considered by the 32d session of 1847-8. In his annual message to the General Assembly, on January 11, 1848, Governor Whitcomb called attention to the growing evils of local and special legislation, its injustice to individual interests, its expense to the treasury, and the undue consumption of time employed in the consideration of private legislation.<sup>56</sup> During this session, a measure to provide for calling a constitutional convention was under consideration in each House. The Senate bill was introduced on December 8, referred to a select committee of one from each congressional district,<sup>57</sup> reported favorably, advanced to engrossment by a vote of 25-23<sup>58</sup> and rejected on January 24, by a vote of 21-24.<sup>59</sup> The House bill was introduced on January 26 and referred to a select committee of 5.<sup>60</sup> This bill provided, among other things, that electors should vote by ballot on the question of calling a constitutional convention. The committee to whom the bill was referred was instructed to provide for a viva voce vote, and to insert a proviso depriving the succeeding General Assembly of all authority to call a convention "unless a majority of all the votes cast at such election shall be in favor of such convention." On February 8th, the committee reported a substitute bill which was concurred in by the House, advanced to engrossment by a vote of 46-39 and

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53. Two Whigs and 1 Democrat.

54. In favor of advancement, 23 Democrats and 6 Whigs; opposed 18 Whigs and 2 Democrats.

55. Senate Journal, 31st Session, 469 and 524.

56. House Journal, 32d Session, 131.

57. Six Democrats and four Whigs.

58. In favor of engrossment, 23 Democrats and 2 Whigs; opposed, 22 Whigs and 1 Democrat.

59. In favor of passage, 21 Democrats; opposed 23 Whigs and 1 Democrat. Senate Journal, 32d Session, 20, 34, 92, 213 and 229.

60. Three Democrats, and two Whigs.



passed on February 15 by a vote of 39-34.<sup>61</sup> On February 16, the Senate laid the bill on the table.<sup>62</sup> On August 30, 1848, the Free Soil State Convention which assembled in Indianapolis adopted a resolution favoring the amendment of the Constitution so as to secure the election of all State and county officers by the people.<sup>63</sup>

When the General Assembly of 1848-9 assembled, the demand for a constitutional convention induced Governor Whitcomb, in his message of December 6, to recommend the calling of a constitutional convention, and to enumerate those provisions of the constitution which in his judgment were in need of amendment. Local and special legislation had increased 350% during the preceding five years; while some relief from this evil might be obtained by clothing the appropriate tribunals with the powers necessary to afford the relief sought by means of local and private statutes, the only effective remedy was an amendment to the Constitution. The calling of a constitutional convention would be "abundantly justified" if it produced no other result than to furnish "an effectual remedy for this growing evil." There was also "a growing desire" that the sessions of the General Assembly should be held biennially, unless specially convened in cases of emergency; this change would reduce the expense of legislation nearly one-half and save the expense of a convention in two years. There should also be amendments prohibiting the creation of any public debt, except under restrictions as to amount and object; and a similar amendment requiring a majority of two-thirds of each house in passing bills granting money from the treasury or public property to individuals. Although the Governor considered these amendments highly important, he thought no convention should be called "unless first authorized by a direct vote of the people." The 12-year amending clause he dismissed as merely "directory." He considered the time "to be propitious for moving in this question;" the excitement of a national election had just been left behind and if steps were taken to call a convention the whole proposition could be disposed of before the Presidential campaign of 1852. It was difficult to find a citizen who was not in favor of some amendments and the only opposi-

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61. In favor of passage, 33 Democrats and 6 Whigs; opposed, 33 Whigs and 1 Democrat.

62. House Journal, 32d Session, 217, 290, 440, 472-474 and 608; Senate Journal, 634 and 650.

63. Indiana State Sentinel, February 14, 1849.

tion to the proposition was "the fear that others would be made more than counterbalancing the advantage." But "in no instance has the constitution of any other State been amended . . . in which it is not almost universally regarded as an improvement," and Indiana, he thought, would hardly be an exception. Although the majority of 5,036 in favor of a convention in 1846 was small, "if it indicated anything, it was that the popular will favored the measure." The next General Assembly "declined, and perhaps justly so" to call a convention, "and mainly, it is presumed, because the vote was far from being a full one . . . ." "My information since that time leaves a strong conviction on my mind, that a large majority of the people are now in favor of the measure."<sup>64</sup>

In response to the Governor's recommendation four constitutional measures were introduced in the House and two in the Senate. The first House bill was introduced on December 7 and passed on December 27, and referred to the Senate. That Chamber had already perfected a measure substantially identical and the House bill was not further considered.<sup>65</sup> On December 15, a second House resolution was introduced proposing to call a convention to amend the Constitution so as to provide biennial sessions of the General Assembly except in cases of emergency, to add the county seminary funds to the common school fund and to provide for the direct election of the Auditor, Treasurer and Secretary of State. This resolution failed of adoption.<sup>66</sup> On the same day, December 15, a bill and a second joint resolution were introduced, but on December 22, on recommendation of the select constitutional committee, they were laid on the table.<sup>67</sup>

The first Senate measure was introduced on December 14 but was given no further consideration.<sup>68</sup> The second and successful Senate measure was introduced on December 15 and was referred to a select committee of one from each congressional district.<sup>69</sup> In its original form the bill provided that the electors should vote by ballot; it was referred to the select committee with instructions to amend so as to provide for a viva voce vote. The committee was also requested to ascertain the probable expense of a convention. The bill was reported back on Decem-

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64. House Journal, 33d Session, 23.

65. House Journal, 33d Session, 35, 67, 132, 175, 221, 231, and 233.

66. Senate Journal, 33d Session, 84.

67. House Journal, 33d Session, 97, 98, 114, 99, 115 and 175.

68. Senate Journal, 33d Session, 84.

69. Five Democrats and five Whigs.

ber 30, amended according to instructions. The committee also reported that they had "endeavored to ascertain the probable expense of such convention" but "having no data upon which to predicate any calculation," such as the number of members, the per diem allowance, the length of the session or the contingent expenses, they were unable to supply the information desired. On January 2, 1849, the bill passed the Senate by a vote of 34-12,<sup>70</sup> the House on January 13, by a vote of 80-2<sup>71</sup> and was approved by the Governor on January 15.<sup>72</sup>

This act was substantially identical with the act of 1846. Election officers were required to ask each voter whether he was in favor or opposed to calling a convention and record the answer, and sheriffs were required to give six weeks' notice of the election.<sup>73</sup> The enthusiasm aroused by the submission of the question of calling a constitutional convention in 1849 was not especially conspicuous, but the proposition was being promoted by all the effective agencies of the dominant political party, while the Whig party was beginning to display signs of its approaching dissolution. The measure was recommended by a Democratic Governor, enacted into law by a General Assembly which was Democratic in both branches,<sup>74</sup> and on January 8, 1849, a week before the bill had been approved by the Governor, the expediency of calling a convention was endorsed by the Democratic State Convention. In addition to endorsing the measure authorizing the submission of the question of calling a convention, the Democratic State Convention recommended three amendments which should be incorporated in the revised constitution, providing that no public debt should be contracted without laying a tax at the same time for paying the interest annually, and for the gradual redemption of the principal, nor until the proposal to contract the debt had been submitted to and approved by the people; providing biennial sessions of the General Assembly except in cases of emergency; and requiring that all votes in the General Assembly should be viva voce instead of by ballot.<sup>75</sup> As early as December 27,

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70. In favor of passage, 26 Democrats and 8 Whigs; opposed, 11 Whigs, and 1 Democrat.

71. In favor of passage, 47 Democrats and 33 Whigs; opposed, 2 Whigs.

72. Senate Journal, 33d Session, 95, 118, 124, 245, 269 and 531; House Journal, 421, and 532; Laws 33d Session, 36.

73. For election notice given in Jefferson county see Madison Weekly Courier, June 30, 1849.

74. Senate: 27 Democrats and 23 Whigs; House: 60 Democrats and 40 Whigs (Indiana State Sentinel, December 2, 1848).

75. Indiana State Sentinel, January 11, 1849.



1848, the Goshen Democrat, which had striven consistently for a convention, expressed the hope that "public attention may be sufficiently aroused to make it successful," and they enumerated a series of amendments which should be incorporated in the revised constitution including the individual liability principle in all charters subsequently granted, with a repealing clause at the tail end; a revision of the banking system; the abolition of local legislation; the equalization of taxes; homestead exemptions; a provision prohibiting the creation of a State debt; a clause preserving the inviolability of civil contracts by preventing the passage of retrospective relief laws; the abolition of punishment for debt; the ten-hour system for laborers on public works and in chartered establishments.<sup>76</sup> The Indianapolis Sentinel charged the Whigs with the responsibility of defeating all attempts to call a constitutional convention by persistently deceiving the people, but they believed that the demand for a convention was now universal. "We believe that there is not a newspaper in the State which now openly opposes a convention, while most of them of all parties, are very decidedly in favor of one." The Sentinel advocated a change in the judicial system of the State, including the creation of courts of conciliation; a change in the common school system; and a provision prohibiting the State from sharing in sinking funds and other like contrivances.<sup>77</sup> The South Bend Register, "one of the ablest Whig papers in the State," was "decidedly in favor of a convention . . . upon mature reflection"; the present was a "propitious time" and a "happier era of toleration" than in 1828 and 1840. They hoped that all partisanship would be eliminated but they feared that "the perversity of all parties will combine . . . to prevent the achievement of such a desirable consummation."<sup>78</sup> The election of 1849 was held on August 6, and 81,500 votes were cast in favor of a convention and 57,418 opposed.<sup>79</sup> This vote represented an undoubted majority and the ensuing General Assembly was therefore bound to provide for the election of delegates to a convention to revise, alter or amend the Constitution.

**Election of Constitutional Delegates.**—At the 34th session of 1849-50 the Democrats were in control of both branches

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76. Cited in Sentinel, January 31, 1849.

77. Sentinel, May 16, 1849.

78. Cited in Sentinel of May 19 and May 25.

79. Governor's message, Senate Journal, 34th Session, 20. The total vote of the State for Governor was 147,250, and the total vote of the State 149,774.

of the General Assembly<sup>80</sup> and capable, therefore, of carrying to fruition the constitutional measures which they had inaugurated in 1849 and which had been approved by the electorate at the ensuing general election. In his annual message of December 4, 1849, Governor Paris C. Dunning laid before the General Assembly the results of the August election which disclosed that a majority of 6,612 votes had been cast in favor of a convention over all the votes cast at the election. The duty of the General Assembly was plain. It was necessary to district the State for the election of delegates and to fix the time when the convention should meet. In discharging that duty the Governor suggested that the members of the General Assembly should "divest themselves of all party predilections" and make such an apportionment "as will insure to the people of the State, irrespective of parties, a full and fair representation in that body." If this were done, he thought "a great initiative step is taken, which will tend as much as any other to predispose the people of the State to adopt the new constitution which the convention may present to them for their ratification." He further reminded the legislators of the necessity of levying an additional tax to defray the expenses of the convention and cautioned them to enact as few laws as possible since laws so passed "may become inconsistent or inoperative under the new organization of the State Government."<sup>81</sup>

The act, by virtue of which the Convention of 1850 was assembled, was introduced in the Senate on December 4, 1849,<sup>82</sup> and referred to a select committee of ten.<sup>83</sup> On December 14, the committee returned a favorable report and recommended the adoption of several amendments. The bill passed the Senate on January 3, and the House on January 11, by a vote of 53-28,<sup>84</sup> and after having been considered by two separate conference committees was finally agreed to and approved by the Governor on January 18.

During the progress of the bill through the two houses the questions most seriously contested were the date of the election of delegates, the date of assembling the convention, the date of submitting the completed constitution to the people for ratification,

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80. Senate, 29 Democrats and 21 Whigs; House, 58 Democrats and 42 Whigs.

81. Senate Journal, 34th Session, 20.

82. By Mr. Randall, a Democrat.

83. Six Democrats and four Whigs.

84. In favor of passage, 21 Democrats and 3 Whigs; opposed, 21 Whigs and 1 Democrat.

the method of appointing the official stenographer, the qualifications of electors and delegates, and the apportionment of delegates. The original draft of the bill provided that the election of delegates should be held on the first Monday in April, 1850; on recommendation of the select committee, this date was changed to the first Monday in August which fell on the day of the general election. As originally provided, the convention was to meet on the first Tuesday of May; the select committee recommended the first Monday of September; and, after considering other proposed dates, the date was fixed for the first Monday in October. The original draft of the bill provided that the completed draft of the constitution should be submitted to the electors on the first Monday in April; the select committee struck this out but made no further recommendation; the date was finally left to the determination of the next succeeding General Assembly. The most bitterly contested of all the questions involved in perfecting the law was the apportionment of delegates. As finally adopted the convention consisted of a number of delegates equal to the whole number of senators and representatives (150), and apportioned in the same manner as members of the General Assembly were apportioned, except that Hamilton county alone elected the senatorial delegate in the senatorial district composed of the counties of Hamilton, Boone and Tipton; and Daviess and Martin counties elected one delegate each separately instead of two delegates jointly. The recommendation of the select committee was that the convention should consist of two delegates from each senatorial district, 100 members in all. A variety of alternative plans were proposed on the floor of the House and Senate, the outstanding features of which were, the districts from which the delegates should be elected and the number of delegates composing the convention. The districts suggested for the purpose of electing delegates included senatorial districts, representative districts, counties, a combination of counties and senatorial districts, and specially constituted districts. The number of delegates proposed ranged from 50 to 150.<sup>85</sup> Some of the plans also

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85. The following are the main outlines of the plans proposed: 50 delegates, one elected from each senatorial district; 150 delegates, elected from senatorial districts, each district to be entitled to as many delegates as it had senators and representatives; election by senatorial districts, each district to be entitled to one delegate, districts having a population of over 3,500 and less than 5,000, three delegates, and districts having a population of over 5,000, four delegates; election by senatorial districts, each district having a population of over 4,000 to be assigned one additional delegate; 100 delegates, elected from representative districts, guaranteeing to each county at least one representative; election from representative districts, each district to have one delegate, those districts having a population of not less than 2,000 nor more than 3,000, two delegates, those having from 3,000 to 4,000, three delegates, those having over 4,000, four delegates.



contemplated giving the more populous districts additional representation.<sup>86</sup>

As finally adopted, the act provided for the election of 150 delegates, at the general election of August, 1850, to compose a constitutional convention which should meet on the first Monday of October, 1850, to revise, amend or new-model the Constitution. Fifty of the delegates were to be elected from senatorial districts and were known as senatorial delegates, and 100 were to be elected from representative districts and to be known as representative delegates. The draft of the constitution when completed was to be laid before the next ensuing General Assembly to be properly disposed of.<sup>87</sup>

Having provided for the election of delegates it was necessary to provide for an appropriation to defray the necessary expenses involved. On January 15, a resolution was introduced in the Senate instructing the Committee on Finance to inquire into the expediency of providing by law for the negotiation of a loan to defray the expenses of the convention. Although the resolution was adopted, no action was taken,<sup>88</sup> as four days later, on January 19, an act was approved which appropriated \$40,000 to defray the expenses of the convention.<sup>89</sup> On January 21, an act was approved authorizing the Governor, Auditor and Treasurer of State to provide suitable accommodations for the convention either in the representatives' hall or the Masonic Hall or in some other suitable building.<sup>90</sup>

The plan for the apportionment and election of delegates evoked comparatively little adverse criticism. Perhaps the feature most seriously condemned was the fact that a special election was not provided for in order to divorce the election of delegates from all other partisan matters. The Indianapolis Journal had advocated this plan on January 7, before the bill had been finally adopted. On January 16, two days before the Governor had affixed his official signature to the constitution bill, the

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86. Senate Journal, 34th, Session, 11, 12, 125-6, 190, 233, 268-273, 289-295, 308-311, 321-324, 377-378, 586-7 595, 596, 630, 637, 638, 660, 674, 691 and 749; House Journal, 499, 508, 517, 524-5, 526-534, 649-50, 668, 691, 708, 736, and 767; Laws, 34th Session, 29.

87. In addition to this act, two other similar measures were introduced but were given brief consideration. House Journal, 34th Session, 30 and 34. A joint resolution was also considered relative to the compensation of election officers. Senate Journal, 533.

88. Senate Journal, 34th Session, 654.

89. Laws, 34th Session, 5.

90. Laws, 34th Session, 250.

Whig members of the General Assembly and other prominent Whigs from various parts of the State held a meeting in Indianapolis at which they adopted a series of resolutions enumerating the changes which they thought ought to be made in the Constitution. These recommendations included the direct election of all legislative and judicial officers; the extension of the suffrage to all native and naturalized citizens over the age of 21 years; prohibiting the contraction of debts, except to meet obligations previously assumed and to repel invasion and sustain the political institutions of the State, without submitting the proposal to a direct vote of the people; the addition of fines and forfeitures and the county seminary fund to the common school fund; biennial sessions of the General Assembly except in cases of emergency; the abolition of local legislation; the reduction of the number of officers and the size of salaries; the encouragement of agriculture, mining and the mechanic arts; and the exemption of a homestead from enforced sale.<sup>91</sup> On March 1, 1850, the Democratic State Central Committee issued a circular to the voters of the State which was designed partially as a reply to the Whig resolutions of January 16. In this circular reference was made to the "secret session" of the Whigs "in which were no doubt full and freely discussed the means of gaining a party triumph, either in the next legislature or State Convention . . . if not both." They approved of the resolutions which had been adopted but denied that they were "Whig principles" and asserted that there was "a studied effort to deceive." Democratic conventions all over the country had been incorporating these principles in their constitutions. "A number of these have been seized upon by the secret caucus above alluded to, and appropriated as the exclusive property of the Whig party of Indiana." Since the whole Constitution would be "thrown open for alteration and amendment," and since Democratic conventions had made constitutions "in accordance with the spirit of the age" and were "therefore to be trusted," the committee recommended full delegate tickets to be voted on at the ensuing August election. They were further confirmed in this conviction by the belief that there were "very many persons, still acting with the Whig party, that would much rather trust

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91. Indianapolis State Journal, January 18, 1850. These resolutions are practically identical with a list which appeared in the Journal of January 7, "M", in the Journal of March 23, 1850, advocated triennial sessions; longer terms of public officials which he thought would save \$30,000 annually; general incorporation laws the prohibition of legislative divorces; altered banking provisions; and the elimination of legal technicalities and courts of conciliation.

our Constitution in the hands of a Democratic convention than with their own party friends.''<sup>92</sup>

There was considerable sentiment throughout the State among the more public spirited men of all parties to eliminate all political strife in the selection of delegates. The success of this plan depended on the nomination of compromise or composite tickets, containing the names of both Democrats, and Whigs, and on holding a special election for the selection of delegates. The latter plan, as has been shown, was persistently but unsuccessfully urged when the bill providing for the election of delegates was under consideration. The success of the former plan depended on the attitude of the Democratic organization, since the Whig electorate had dwindled to such an extent that they could entertain hopes of carrying but very few districts. In their resolutions adopted on January 16, the Whigs ignored this question. In the circular issued by the Democratic State Central Committee on March 1, the Democrats throughout the State were urged to nominate full party tickets, including candidates for the office of constitutional delegate. The Indianapolis Journal took umbrage at this recommendation and adverted to the fact that when the bill was under discussion a determined attempt was made to so frame that measure as to avoid all party strife. But "already we see the Democratic State Central Committee issuing their mandate to the faithful, commanding them to make party nominations of candidates for delegates." This, they insisted, would "render the election of delegates a mere matter of party strife," and they had been informed that "great dissatisfaction" existed "among a portion of the Democratic masses in relation to the nomination of delegates," as they desired to be left free and untrammelled in their choice.<sup>93</sup> On May 30, the South Bend Register advanced a rather belated plan proposing that in districts entitled to two delegates each party should nominate one candidate and all voters should unite in supporting them. The Indianapolis Sentinel thought this plan was worthy of consideration but suggested that the Free Soilers might conspire to defeat it.<sup>94</sup> So far as the writer is aware, the only attempt to carry out the plan of providing for a composite delegate ticket was in Marion county. The Democratic convention of that county was held on April 13. On that day a communication, signed by the chairman and sec-

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92. Daily Lafayette Courier, March 1, 1850.

93. Issue of March 23, 1850.

94. Sentinel, May 30, 1850.



retary of the Whig county Central Committee, was addressed to the President of the county Democratic convention, expressing the belief that the good of the community would be best promoted by the selection of a compromise ticket to run for delegates to the constitutional convention, and proposing that the Democrats nominate two candidates only and that the Whig convention should nominate two candidates and that the four candidates so selected should be supported jointly by the two parties. Or if this plan proved unsatisfactory, they pledged the Whig party to any other similar compromise plan which the Democrats might suggest. When the Democratic convention assembled, the Whig proposal was referred to a select committee of one delegate from each township who returned a report expressing the conviction that it "would be inexpedient to adopt the suggestions of the Whig committee," for the reasons that "there is no certainty that this suggestion would be carried out by the two parties in good faith, if adopted," since the plan was not agitated before the people; a convention of the Whig members of the last legislature "recommended the nomination of full tickets by the Whig party, embracing delegates to the convention,"<sup>95</sup> and "most of the decided Whig counties in the State are acting on that suggestion"; the Democratic State Central Committee had recommended the nomination of full delegate tickets; the Marion county Democratic Central Committee had agreed with that recommendation and acted accordingly; since the Whigs were familiar with these facts, they could not but "entertain the idea, that this proposition was either thrown in here for the purpose of distracting our counsels, and under the certainty of its rejection to make political capital in the coming canvass; or the Whig party (or at least its leading men), in view of their situation as a party and the recent triumphs of Democracy throughout the Union, have despaired of electing any of their men under any other method." Moreover, the Whigs had never granted the Democrats any favors either in 1840, "when they were in the ascendant," or under the present Taylor administration "when proscription is the watchword throughout the Union." The argument that "there is no use for party in a convention" had little weight with the committee, inasmuch as the whole Constitution was to be thrown open to alteration, a contingency which called for an extensive representation of Democrats in the convention. They believed they had "a suffi-

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95. This assertion is utterly without foundation and was justly repudiated by the Whigs of Marion county.

cient number of good and true Democrats in our ranks, that will faithfully represent the people in the convention," and they therefore admonished the Whigs to "aid us in sending to the convention a good Democratic delegation, and we have every confidence that the result of their deliberations will be a Constitution that will be fully and freely ratified by the people of the State." The Whigs of Marion county assembled in convention on April 20 and having been informed of the negotiations which had been carried on with the Democrats, they adopted a resolution cordially approving the advances made by the Whig county committee and then proceeded to the nomination of four candidates, since the action taken by the Democratic convention "has put it out of the power of this convention to make its nominations with a view to such compromise . . . ." <sup>96</sup>

The delegates to the constitutional convention were elected at the regular State election held on August 6, 1850. Each party had its own candidate in the field, and their names appeared on the tickets with the other party candidates. As a result of the election the convention was overwhelmingly Democratic. Of the 50 senatorial delegates, 33 were Democrats and 17 were Whigs; of the 100 representative delegates, 62 were Democrats and 38 were Whigs. Taking the convention as a whole, there were 95 Democrats and 55 Whigs.<sup>97</sup> The delegates were a fairly representative group of men. Speaking editorially on October 7, 1850, the *Indianapolis Journal*<sup>98</sup> said: "From the character of the delegates elected, and the spirit which seems to animate them, we feel justified in predicting that they will assume those duties with a determination to act in such manner as will secure to the people of the State a Constitution under which all their rights will be amply protected and their prosperity and happiness insured as far as it is possible to do."

**Amendment of the Constitution by the Legislature.**—As has been shown above, the only method of amending the Constitution of 1816, with the exception of the provisions relating to the location of the seat of Government and the method of voting, was by calling a constitutional convention. This was a slow and costly process and therefore rather unpopular with the electorate.

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96. *Tri-Weekly State Journal*, April 24, 1850.

97. The political classification as here given is adopted from the *Indianapolis Journal* of October 7, 1850.

98. A staunch Whig paper.

Unsuccessful attempts were made in 1820 and 1821 to submit the question of calling a constitutional convention to the people. In 1823, the question was actually submitted to a referendum vote and was overwhelmingly defeated. Meantime, both the proponents and the opponents of a convention admitted that the Constitution was defective and could be amended both in the interests of economy and to the general advantage of the commonwealth. In order to enable the State to emerge economically from this *en passe*, a very interesting and clever device for facilitating the amendment of the Constitution was invented and proposed by Mr. Abel Lomax and submitted to the consideration of the House on January 16, 1826. The device is the lineal ancestor of the method of amendment which was incorporated in the Constitution of 1851. Mr. Lomax proposed to provide for the appointment of a select committee "to enquire what amendments, if any, ought to be made to the Constitution . . . ." He was particularly desirous that the Constitution should be so amended as to provide "that officers may be removed from office by the verdict of a jury, and judgment of a court," and that the General Assembly should meet biennially; and to these two proposed changes was added, by amendment, the method of voting *viva voce*. The method by which these changes were to be achieved was novel and interesting. The committee was instructed to inquire "whether it is not expedient to provide by law, to amend the Constitution in part, without subjecting the whole to revision." "Certain obnoxious parts" were to be selected by the General Assembly and submitted to the people "for their opinion at the annual election . . . ." When the people, by their votes, had designated which provisions of the Constitution they wished to have amended, provision was to be made "for constituting the members of the General Assembly, by special delegation, members of a convention to carry the will of the people into effect on the subjects submitted to them." This proposal enlisted some support but was finally rejected by a vote of 15-26.<sup>99</sup>

Two years later this idea was developed still further. The project of calling a constitutional convention had been defeated by a substantial majority at the August election of 1828. Meantime, "an opinion seems to be prevalent among the people of this State" that annual sessions of the General Assembly "occasion

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99. House Journal, 10th Session, 307.



an expenditure of public money'' and ''other inconveniences without corresponding benefits.'' A resolution was therefore introduced in the House instructing the Committee on Elections to ''inquire into the propriety and expediency'' of authorizing the electors to express their assent or dissent to a proposition to amend the Constitution so that the General Assembly should meet biennially ''except when convened by the executive in cases of emergency.'' The possible unconstitutionality of this method of procedure was promptly dispensed with by the adoption of an amendment ''to make it imperative'' on the committee to report a bill. The bill was then laid on the table and not subsequently considered.<sup>1</sup>

A month later, on January 10, 1829, what was probably designed to be the same proposition was introduced in the Senate. This also was a resolution of inquiry but in one other respect it was more specific, and approaches more nearly to the method of amendment adopted in 1851. The committee, if they deemed the proposed method expedient, were to prepare ''an amendment to the constitution'' which was to be ''submitted to the people for their acceptance or rejection'' at the August election of 1829. The procedure to be followed by the succeeding General Assembly in actually incorporating the ratified amendment in the Constitution and proclaiming its adoption, was not fully developed. Apparently the Senate was doubtful of the constitutionality of this procedure and the resolution was therefore amended to provide for the preparation of a bill authorizing the electors to vote at the August election of 1829 on the question of calling a constitutional convention to amend the Constitution to provide for biennial sessions of the General Assembly, biennial election of senators and representatives, the impeachment and removal of justices of the peace by circuit courts, and the impeachment and removal of circuit judges and all other officers by the Supreme Court. The resolution as amended was laid on the table by a vote of 13 to 8.<sup>2</sup>

At the 14th session this plan was again revived and elaborated. On December 22, 1829, a resolution was introduced in the Senate setting forth the fundamental postulate that ''the people are the legitimate distributors of all power exercised by the government and of those who administer the same'' and that they have ''a right to change, alter, amend or new-model their government,

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1. House Journal, 13th Session, 387.

2. Senate Journal, 13th Session, 226-227.

without appointing delegates to meet in convention for that purpose, if any mode can be adopted, by which every citizen may have a voice, so that the will of a majority can be ascertained.” The resolution then instructed the Judiciary Committee to report a bill embodying propositions numbered one and two. The first of these two propositions transferred to the circuit courts the power of trying and determining impeachments of all inferior officers, including probate judges, clerks, sheriffs, coroners, recorders, justices of the peace, etc., on presentment by grand juries; the second proposition provided for biennial sessions of the General Assembly, and authorized the Governor to convene extraordinary sessions in cases of emergency. These two propositions were to be submitted to the electors at the August election of 1830, so arranged that “the people may vote for the one, and against the other, or for both as they may think proper.” On the second Monday of the session of 1830, the President of the Senate and the Speaker of the House were to count the votes in the presence of both houses, and “if upon counting the votes. there shall appear to be a majority in favor of either or both proposed amendments, the one or both shall then be taken as a part of the constitution.” The resolution was immediately rejected by a vote of 9-13. At the 16th session, on December 27, 1831, the same resolution was presented, and in the course of its consideration an attempt was made to amend the original resolution so as to require the committee “to inquire into the constitutionality and expediency” of making the proposed amendments, but the motion was lost by a vote of 12-17. A substitute was then proposed which retained the preamble postulating, *inter alia*, that the people have the right to new-model their Government “without appointing delegates to meet in convention for that purpose,” and instructing the Judiciary Committee “to inquire into the expediency” of authorizing the electors to vote at the August election of 1832 on the question whether they wished to modify the Constitution to provide biennial sessions of the General Assembly and to transfer cases of impeachment to the circuit courts. The proposed substitute was rejected by a vote of 11-18 and the original resolution by a vote of 4-25.<sup>3</sup>

Meantime at the 15th session a somewhat different plan was proposed. A resolution was presented in the Senate on February 3, 1831, providing for the appointment of a select committee to

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3. Senate Journal, 14th Session, 136; 16th Session, 147.

prepare a bill authorizing the electors to vote at the August election of 1831 upon the proposition "that the next General Assembly shall act as a convention to change the Constitution" so as to transfer to the circuit courts the right of impeaching inferior officers and to provide biennial sessions of the General Assembly, unless convoked by the Governor in cases of pressing emergency. Without consideration, the resolution was laid on the table by a vote of 11-10.<sup>4</sup>

At the 17th session a measure was presented in the House on January 22, 1833, which consolidated in a way the pre-drafted amendment and convention plan. By virtue of this plan, the electors at the August election of 1833 would be called upon to determine two questions: First, whether they wished a convention called to revise the Constitution, and second, to express their opinion on a list of pre-drafted amendments of "certain sections" of the Constitution "that ought to be revised," and which were to be recommended to the people. The amendments proposed included biennial election of representatives and quadrennial election of senators; election of Governor for 4 years, rendering him ineligible to serve more than 8 years out of any 10 years; abolishing the office of associate judge; extending the terms of justices of the peace to seven years, and constituting them a county court to transact all county business; viva voce voting; the application of military exemption funds and all fines and forfeitures to the support of common schools instead of county seminaries; and the consolidation of the offices of clerk and recorder in all counties. The resolution was rejected at once without vote.

At the 29th session an attempt was made to provide for the call of a constitutional convention. When this bill was under consideration, an amendment was proposed "to submit the isolated question of biennial sessions of the General Assembly and not interfere with any other constitutional provisions, and that the time of meeting of the General Assembly to be on the first of January, and that all elections shall be viva voce." The amendment was lost by a vote of 40-49.<sup>5</sup> At the 30th session of 1845 an attempt was made to provide for the calling of a constitutional convention to so amend the Constitution as to provide biennial sessions of the General Assembly, but the proposal proved unpopular and a bill providing for a general revision was substituted.<sup>6</sup>

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4. Senate Journal, 15th Session, 435.

5. House Journal, 29th Session, 74, 85, 146 and 200-2.

6. Senate Journal, 30th Session, 45 and 76.



The final attempt to secure a partial amendment of the Constitution was made at the 33rd session of 1848-49 when the act, by virtue of which the question of calling a constitutional convention was submitted, was under consideration. On December 15, 1848, a resolution was presented in the House, designed to provide for the call of a convention to amend the Constitution to provide only for biennial sessions except in cases of emergency, the addition of the seminary fund to the common school fund, and the election of Treasurer, Auditor and Secretary of State by the people. The proposal was rejected<sup>7</sup> and the idea was not subsequently revived until it was taken up by the Convention of 1850 and incorporated in the present Constitution.

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7. House Journal, 33d Session, 97.

## PART II. 1850-1916

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**The Convention of 1850.**—The Constitutional Convention of 1850 assembled in the Hall of the House of Representatives in Indianapolis at 10 o'clock on the morning of October 7, 1850, and was called to order by Charles H. Test, Secretary of State, who presided until a president was elected. The Convention adjourned on February 10, 1851, after a session of 127 days. The oath of office was administered to the members present by Isaac Blackford, one of the judges of the Supreme Court, and the Convention then proceeded to perfect its organization. George W. Carr, the delegate from Lawrence county, who had been the presiding officer of the House during the last two preceding sessions of the General Assembly, was elected president.<sup>8</sup> In the election of the inferior officers of the Convention, there was considerable filibustering. As soon as Mr. Carr had been elected and formally installed into office, John Pettit, one of the acknowledged leaders of the Democrats, offered a motion to adjourn until 9 o'clock the following morning "in consequence of the amount of business which it was desirable should be done out of doors . . . ."<sup>9</sup> Mr. Kilgore, a Whig leader, and a man of considerable parliamentary experience, speaking for "the within-door members", wished to know more about the "informal business out of doors" and "how the officers of the Convention were to be elected."<sup>10</sup> The object of adjournment, in the opinion of Mr. Ritchie, a Democrat, was "that some action or some understanding might be had upon this subject out of the Hall." He believed in the "doctrine of caucuses" and "if the Democratic party thought it proper to caucus" he was ready to adjourn for that purpose. As the Democrats were largely in the ascendancy, the Convention adjourned and a plan of action was perfected by each party. The Whig plan was to refer the selection of subordinate officers to a select committee; the Democrats wished to elect all officers directly by the Convention and by an omnibus vote. After a desultory discussion as to the number of clerks actually

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8. Carr received 134 votes; six members voted blanks. The selection of Carr was generally acceptable to the Convention, although the six delegates who voted blanks were Whigs.

9. Debates, 7.

10. Ibid., 6-7.

necessary to discharge the work of the Convention, both plans were rejected and the secretaries were elected singly by direct vote and the sergeants-at-arms and doorkeepers were appointed by resolution.<sup>11</sup>

The question of partisanship again arose in the matter of selecting a printer to the Convention. Mr. Jacob P. Chapman, a delegate from Marion county, was at that time the State printer and understood that he was to do the printing for the Convention. As the printing of the Convention was an unusual item, it was contended that the Convention should elect its printer the same as other officers. The real question was doubtless the political complexion of the appointee. Mr. Bascom desired "that some good Democrat should have the printing at fair prices" and "as the Democrats had the majority in the Convention, the question of printing could easily be decided."<sup>12</sup> A committee was finally appointed to investigate the question and after consideration they brought in a unanimous report that "the State printer is not ex-officio the printer to the Convention and has no legal claim by virtue of his office to do the printing for this Convention," and on October 18, the Convention formally proceeded to the election of a printer who was charged with the duty of doing all printing which might be required by the Convention.

Two plans were proposed for the creation of committees to consider and prepare a draft of sections and articles of the Constitution. The first plan, proposed by Mr. Pettit, provided for the appointment of three committees, one on the legislative, one on the executive and one on the judicial department, each to consider all matters referred to it and to report provisions relative to that department. The alternative plan was proposed by Mr. Borden and contemplated the creation of nineteen committees with similar powers and duties. The matter was compromised by the adoption of a resolution providing for the appointment of a committee of two from each congressional district to report a plan for the business of the Convention and to designate the number and functions of the different committees.<sup>13</sup> This committee was appointed on October 10,<sup>14</sup> and on October 11, they brought in a report recommending the creation of twenty-two

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11. There were eight candidates for principal secretary; three ballots were required to elect; on the third ballot William H. English was chosen by a vote of 76 out of 145.

12. Debates, p. 21.

13. Conv. Journal, 17-19, 24.

14. Ibid., 28.



standing committees and two subordinate committees and that no resolution or other matter be referred to any standing committee until it had first been submitted to the Convention. With a few changes, this plan was adopted by the Convention.<sup>15</sup>

After the committees had been appointed, the delegates began introducing resolutions embodying proposals which they desired to have incorporated in the Constitution. These resolutions were considered by the Convention and rejected, or accepted and referred to the appropriate committee. The old Constitution was also referred by the Convention to the proper committees for consideration.

In the meantime the Convention busied itself with attempting to obtain a better hall for holding the sessions of the Convention, wrangling over the question of the employment of a stenographer and various other routine matters. There was only one, but that a very curious, election contest. Mr. James Osborn and Mr. Benj. F. Brookbank were the contestants for the seat of representative delegate from Union county. The committee on elections, to whom this contest was referred, found on investigation that Mr. Brookbank had 605 votes and Mr. Osborn had 603 votes, but that one of Mr. Brookbank's votes was for senatorial delegate and one vote had been cast by a person who had been a resident of Ohio for eleven and one-half months. The committee concluded that these two votes should be deducted and that if that deduction were made the vote would be a tie. In that event they recommended the adoption of a resolution declaring that "no person has been legally elected to the office of representative delegate to this Convention from the county of Union, and that the seat of such representative delegate in this Convention is vacant." The report was concurred in by a vote of 103-23.<sup>16</sup> The Convention then adopted a resolution instructing the president to certify the mileage and per diem of Mr. Brookbank and Mr. Osborn up to October 21, inclusive, allowing them the legal rates of a member of the Convention and that the President inform the Governor that a vacancy existed in the convention of representative delegate from Union county.<sup>17</sup> Later, on November 15, Mr. Brookbank reappeared, presented his credentials and took his seat as a delegate.<sup>18</sup>

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15. Convention Journal, 41, 50.

16. Ibid., 107-112.

17. Ibid., 114.

18. Ibid., 256.

The first report by a standing committee was submitted on October 25, and from that date to the end of the Convention the delegates were diligently engaged in formulating sections to be incorporated in the Constitution. The first portion of the Constitution as referred to the Committee on Revision and Phraseology was reported back on February 1, and the last portion of the Constitution was reported back the last day of the Convention.

As finally adopted, it was provided that the proposed new Constitution should be submitted to the electors as a whole, except the provision relating to the colonization of negroes and mulattoes, which should be submitted as a separate proposition. The election was held on August 4, 1851, and 109,319 votes were cast in favor of the adoption of the Constitution and 26,755 votes against its adoption; 109,976 votes were polled in favor of the article relative to the exclusion and colonization of negroes and 21,066 votes were polled in opposition. Accordingly, on September 3, 1851, Governor Joseph D. Wright issued his proclamation declaring the Constitution in force and effect from and after November 1, 1851.

**The Elective Franchise.**—By virtue of the provisions of the Ordinance of 1787, the *pays legal*—the body of citizens who possessed full political rights—consisted of the free white male inhabitants 21 years of age or upward who owned 50 acres of land in the district and who had been citizens of one of the States and were at the time residents of the district, or who had resided for two years in the district. However, as the Governor was authorized to appoint all minor territorial and local officers, both civil and military, prior to the organization of a representative government, the right of suffrage did not exist until 1798. From that time until 1816 there was a continual struggle for the extension of the franchise to include those classes which were excluded from voting and to increase the number of elective officers. By an act approved February 26, 1808, the period of residence in the Territory was reduced to one year and persons otherwise qualified who owned a town lot of the value of \$100 were given the right of suffrage.<sup>19</sup> By an act approved February 27, 1809, legislative councillors and the congressional delegate were made elective.<sup>20</sup> By an act approved March 3, 1811, the right of suffrage was extended to all free white male persons 21 years of age or upward who had paid a county or territorial tax and had been residents of

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19. Annals, 10th Cong., 1st Sess., 2834.

20. Annals, 10th Cong., 2d Sess., 1821.

the territory for one year.<sup>21</sup> The formal memorial to Congress, asking admission to the Union, requested that the election of delegates should be “conducted agreeably to the existing laws of this territory.”<sup>22</sup> Accordingly, the Enabling Act authorized all male citizens 21 years of age and upward who had resided in the Territory for a period of at least one year and who had paid a county or territorial tax<sup>23</sup> to vote for constitutional delegates. When the Enabling Act was under consideration in the Senate, an attempt was made to extend the franchise still further by eliminating that provision which required that an elector shall have paid a county or territorial tax; but the proposed amendment was rejected by a vote of 13-9.<sup>24</sup> The Constitution of 1816 established full manhood suffrage; the qualifications depending on race, sex, age, residence and citizenship. The right of suffrage was extended to all white male citizens of the United States, of the age of 21 years and upwards, who had resided in the State for a period of one year, except persons, otherwise qualified, who were enlisted in the armies of the United States or their allies.<sup>25</sup> As originally reported from committee, the right of suffrage was extended to all white male persons who had resided in the State for a period of six months prior to an election; the change was made in Committee of the Whole.<sup>26</sup> The elective franchise was restricted, however, by the limited number of officers for which qualified electors were entitled to vote. The list of elective officers included the Governor,<sup>27</sup> Lieutenant-Governor,<sup>28</sup> Representatives, Senators,<sup>29</sup> Sheriffs, Coroners,<sup>30</sup> Recorders,<sup>31</sup> Associate Judges of the Circuit Courts<sup>32</sup> and Clerks of the Circuit Courts.<sup>33</sup> The appointive officers included the Secretary,<sup>34</sup> Treasurer and Auditor of State,<sup>35</sup> and the Presidents of the Circuit Courts, who were appointed by a joint ballot of the two houses of the General Assembly; the Judges of the Supreme Court, who were appointed by the Gov-

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21. Annals, 11th Cong., 3d Sess., 1347.

22. Western Sun, January 27, 1816.

23. Annals, 14th Cong., 1st Sess., 1841.

24. Ibid., 312.

25. Art. VI, Sec. 1.

26. Conv. Jour., 15, 22.

27. Art. IV, Sec. 2.

28. Art. IV, Sec. 15.

29. Art. III, Sec. 1.

30. Art. IV, Sec. 25.

31. Art. XI, Sec. 10.

32. Art. V, Sec. 7.

33. Art. V, Sec. 8.

34. Art. IV, Sec. 21.

35. Art. IV, Sec. 24.



ernor, with the advice and consent of the senate;<sup>36</sup> the clerk of the Supreme Court who was appointed by the court itself;<sup>37</sup> non-commissioned military officers, who were appointed by the captains;<sup>38</sup> adjutant-generals and quartermaster-generals and their aides de camp, who were appointed by the Governor;<sup>39</sup> aides de camp and other division staff officers, who were appointed by the major-generals; brigade majors and other brigade staff officers, who were appointed by the brigadier-generals; and regimental staff officers who were appointed by the colonels.<sup>40</sup> Brigadier Generals and Major Generals were elected by their commissioned officers.<sup>41</sup> Captains and subalterns in the militia, majors, colonels and officers of troops and squadrons of cavalry, artillery, riflemen, grenadiers, and light infantry were elected by those persons residing within a district and subject to perform military duty, or by the troop itself.<sup>42</sup> The Governor, by and with the advice and consent of the senate, appointed all other officers whose appointment was not otherwise provided for.<sup>43</sup>

As the Convention of 1850 approached, the question of suffrage was widely discussed. On one point, practically all citizens regardless of politics were agreed. It was the general wish that all public officers, both State and local, should be elected by a direct vote of the people. As early as August 30, 1848, the Free Soil Party adopted a resolution at their State Convention demanding a change in the Constitution providing for the direct election of all State and county officers.<sup>44</sup> On January 16, 1850, the Whig members of the General Assembly and other prominent Whigs held a meeting in Indianapolis and adopted a series of resolutions relative to desirable changes in the Constitution. Among these was a resolution demanding the direct election of all executive, legislative and judicial officers.<sup>45</sup> On March 1, 1850, the Democratic State Central Committee issued a circular instructing all local Democratic Conventions to name full tickets, including constitutional delegates to be voted for at the August election. Among other matters discussed in this circular, reference was made to the

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36. Art. V, Sec. 7.

37. Art. V, Sec. 8.

38. Art. VII, Sec. 3.

39. Art. VII, Sec. 7.

40. Art. VII, Sec. 8.

41. Art. VII, Sec. 5.

42. Art. VII, Sec. 3 and 6.

43. Art. IV, Sec. 8, and Art. XI, Sec. 15.

44. *Sentinel*, February 14, 1849.

45. *Journal*, January 18, 1850.

work of Constitutional Conventions in other States, and the circular adverted to the fact that "in the acts of those Conventions the capacity of the people to elect all their officers judicial as well as legislative, has been fully vindicated."<sup>46</sup> The Goshen Democrat,<sup>47</sup> the South Bend Register<sup>48</sup> and the Indianapolis Journal<sup>49</sup> all insisted on the direct election of all public officers. When the Convention assembled three resolutions were introduced by Democrats and one by a Whig demanding that all officers be elected by the people.<sup>50</sup>

Another cognate question was the residential qualifications for suffrage on which there was division of opinion. In their resolutions of January 16, 1850, the Whigs demanded that electors should include all native and naturalized citizens over the age of 21 years. The Democratic circular ignored the question, and the press generally had little or nothing to say about it. When the Convention assembled, four resolutions were introduced on this subject by Democrats. Two of these resolutions provided a 6 months' residence in the State before acquiring the right to vote.<sup>51</sup> A third resolution provided that the right of suffrage should in no event depend on the naturalization laws of Congress and that aliens must reside in the State one year before voting.<sup>52</sup> The fourth resolution provided that all persons must reside in the State one year before voting; that aliens must have resided in the State one year and have declared their intention of becoming citizens according to the Acts of Congress; and that negroes and mulattoes under no circumstances should be permitted to vote.<sup>53</sup>

Article II, Section 2 of the Constitution was reported to the Convention on October 31, by the Committee on Franchise and Apportionment, which consisted of 11 Democrats and 2 Whigs, and was reported in substantially the form in which it was finally adopted. The section came up for second reading on December 23. In adopting this section the Convention was influenced by the presence of a rather large and increasing alien population. The United States census does not indicate the percentage of foreign born persons residing in the State prior to 1850. The census of

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46. Daily Lafayette Courier, March 1, 1850.

47. Issue of December 27, 1848; cited in Sentinel of January 31, 1849.

48. Cited in Sentinel of May 19, 1849.

49. Issue of January 21, 1850.

50. Conv. J., 26, 49, 61, 159.

51. Ibid., 62, 74.

52. Ibid., 48.

53. Ibid., 65.

that year disclosed that of the 974,815 persons then residing in the State, 520,583 were born in the State, 398,695 were born in the United States outside of the State, and 55,537 or 5.7%, were foreign born. Of the foreign born, 32,692 were males and 22,845 were females. The number of foreign born persons old enough to vote, therefore, was very small. This foreign born population consisted largely of Irish and Germans. The Irish immigration was induced by the disastrous potato famine in the Emerald Isle which began in 1846 and 1847. The German immigration was induced by the abortive midcentury uprisings of 1848.

When the proposed section came up for consideration on second reading Mr. Clark of Hamilton county, a Whig, proposed to substitute the section of the Constitution of 1816, requiring a year's residence in the State before acquiring the right of suffrage, eliminating all reference to foreigners, and authorizing an elector to vote anywhere in the county. The introduction of this resolution precipitated a discussion of the whole question. Although the Whig members generally gave little support to the 12-months' residential qualification clause, the proposal was advocated in debate exclusively by the Whigs and opposed by the Democrats. The champions of the proposed substitute urged that foreigners should have time to familiarize themselves with American institutions and learn the language. Other delegates drew a distinction between different types of foreigners, and thought that those aliens "who settle among us in good faith" should have the right to vote on declaring their intentions; there were, however, large numbers of aliens, employed on public works, "who could sometimes be induced to vote at the instance of their employer"; thus a railroad contractor might sometimes have 50 votes instead of one and be able to control local elections. Those delegates who deprecated this condition asked only that the immigrant should give "some substantial evidence of an actual change of domicile." The opponents of the measure thought that the proposed 12-months' residential qualification, as applied to the transient population, and those employed by contractors, would guard the public against "a mere fragment of the foreign population" and do a grave injustice to the mass of aliens who were a hardy, intelligent, moral and agricultural population; it was unfair to tax foreigners at once and deny them the right of suffrage until they had served out the 12-months' "probationary process"; the section as originally reported by the committee would strongly attach foreigners to our government and institutions; the emigrants then



arriving were superior to those who had arrived a few years previous, many being men of means who intended to become permanent settlers; if the inducements provided by the original section were not extended to the new-comers they would decline to settle in Indiana and go to Illinois and Wisconsin.<sup>54</sup> “They will not,” insisted John Pettit, “be willing to settle in your State, unless they can, at an early day, have a voice in the government, and in controlling the taxation of property.” The rivalry of the two parties to secure the support of the alien voters was undoubtedly an influential factor in procuring the adoption of the section as finally incorporated in the Constitution. The Whig party had acquired the reputation of being hostile to immigrants. It was alleged by delegates that there were “constant quarrels” in the party relative to foreigners, and that the party generally had been inclined to proscribe foreigners. Mr. Hamilton, who was a foreigner and a Whig had long had it urged upon him “that the Whigs, as a party, were much opposed to an early naturalization of foreigners, or to their right to vote until they became fully naturalized.” Mr. Clark, the author of the proposed 12-months’ residential section, stated that the “Whigs have been admonished not to vote against this clause,<sup>55</sup> lest foreigners should be prejudiced against the Whig party, and because this measure would be carried at all events by a very large majority.” Mr. Gregg, a Whig, hoped that “the few Whigs who have the honor of a seat in this body, will not place themselves in a false position in regard to this matter; . . . it had been the policy of political demagogues for the last twenty years . . . to impress upon the minds of the foreign population among us, that the Whigs, as a party, were opposed to their acquiring any political rights under our State or national governments, and that the Democratic party were their particular and peculiar friends.” He denied that “the Whigs as a party, are or ever have been opposed to foreign immigration, or to the adoption of the most liberal policy for extending to them all the rights and privileges of American citizenship.” Although Mr. Clark expressed the conviction that at that time those “duly naturalized hold the balance of power between the two great political parties,” he did not expect the Convention

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54. The Illinois Constitution of 1818, which remained in force until 1870, provided, in Art. VI, Sec. 1, that persons must reside in the State one year before voting. The Wisconsin Constitution of 1848, in Art. III, Sec. 1, provided that the white persons of foreign birth who had resided in the State one year were permitted to vote.

55. That is the original section prescribing a residence period of 6 months.

to adopt the substitute "as a Whig measure"; he assured the delegates that "so little of party feeling have we had manifested in this Convention, that I had almost forgotten that I was a Whig;" the Democrats had "carefully abstained from party discussions and allusions to parties," and those topics "have more frequently been referred to by those of my own political faith"; he was determined not to give an "electioneering vote . . . for the advancement of his party." The proposed substitute was finally rejected by a vote of 90 to 14. Of the 14 votes cast in favor of the 12-months' residential qualification provision, all were Whigs but one, who was a Free Soil Democrat.<sup>56</sup>

No serious question was raised as to the restriction of the right of suffrage to white males, 21 years of age or upward. The residential qualifications of electors and the voting districts caused most trouble. The suffrage qualification section as reported by the committee provided that the elector should vote in the township where he resided. Two attempts were made to provide that electors might "vote anywhere in their county." The first attempt was promptly defeated. The same proposal was included in Mr. Clark's proposed substitute. Some of the delegates were in favor of eliminating all designation of place and authorizing the General Assembly to fix the place of voting from time to time. Formerly, all electors voted at the county seat; later the system of voting by townships was introduced to prevent corruption. The Marion county delegate assured the Convention that the county seats did not wish the outlying townships to cast their votes at the county seat; when this was done it was the arrangement to extend invitations to the electors, dispense favors and employ drill officers to manage the voters. This method was popular with "trickstering politicians" only.<sup>57</sup>

The provision of the Constitution extending lenient treatment to aliens aroused considerable opposition in the State regardless of the unanimity with which it was adopted. Very shortly after its adoption, Jesse D. Bright, an able and adroit Democratic politician, who then represented Indiana in the United States Senate, is reported to have said: "I am opposed to that clause in the new Constitution allowing foreigners to vote, and am sorry it is there. Both parties tried to see how far they could go to get foreign votes. If it was left open, as the negro clause, it would be voted down by

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56. *Conv. Debates*, II, 1292-1304.

57. *Ibid.*, 1292ff.

twenty thousand votes!’’<sup>58</sup> It was repeatedly asserted that the members of the Convention regarded this provision as “the perfection of demagogism,” resulting from an unseemly rivalry of the two dominant parties for political support. “The Democrats wanted to wheedle the foreigners into their support; and the Whigs, to accomplish the same object, must necessarily ‘cut under’ the Democracy, who in turn made still more liberal concessions.” A somewhat more legitimate reason alleged for the adoption of a liberal suffrage provision was “to induce foreign emigration into the State.”

The popular dissatisfaction with the disproportionate influence of the alien electorate was abundantly manifest. This dissatisfaction was both inspired and sustained by the unparalleled immigration which had been proceeding uninterruptedly for the last half dozen years; and it was undoubtedly magnified and distorted by the organized agitation against foreign influence which expressed itself in the so-called Know-Nothing Party which was still rapidly growing in numbers and influence. These newly-arrived aliens, unfamiliar with the political processes of American institutions, were recruited by the diligent and ingenious leaders of rival political factions, and each party accused the other of unscrupulous political trickery. In an editorial of December 16, 1851, the *Journal* said: “We know that the Democracy count largely on an increased foreign vote in consequence of the provision of the new Constitution.” In 1852 the Whigs of Marion county nominated Berry R. Sulgrove and Charles Bonge, a citizen of German extraction, as candidates for State representative. An influential German newspaper of Indianapolis, enjoying a wide and respectable circulation, objected to this combination. The nomination of Bonge was “a genuine federalistic-Whig trick.” Bonge’s colleague was “a young pettifogger, who belongs to those narrow-minded come-down natives, which express themselves particularly violent against the article in the new Constitution, giving foreigners a right to vote after a year’s residence.”<sup>59</sup>

The first two sessions under the present Constitution were

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58. *Indianapolis Journal*, July 19, 1851.

59. *Indiana Journal*, August 28, 1852. Sulgrove was editor of the *Indianapolis Journal* and an exceptionally able man.



predominantly Democratic;<sup>60</sup> at the general election of 1854 the Republicans were successful and in the ensuing session of the 38th General Assembly of 1855 the Republicans controlled the House.<sup>61</sup> This was the first opportunity the Republicans had had to effect any changes in the Constitution. On October 20, 1854, when the complexion of the in-coming General Assembly was definitely known, the Indianapolis Journal laid down the policy which in its judgment ought to be pursued. They enunciated the general proposition adopted from the journalistic campaign carried on by the New York Tribune, the most influential paper of its kind in the country, that "the States alone have the right to determine the qualifications of voters within their limits, and the extent of the power to hold and transmit real property." Citizenship and suffrage should be inseparable. Every effort should be exerted "to destroy the corrupting influence of demagogues" and to achieve "a reconstruction of our pernicious elective regulations." These regulative measures were doubtless designed not merely to keep citizenship and suffrage inseparable but to prohibit the huge importation of extra-state votes which invariably scandalized our October elections. Their program was to "turn all our efforts individually to the accomplishment of the great work of amending our laws and Constitution . . . . We must keep the right of suffrage and citizenship together. No one should vote who is not a citizen, and no man should be a citizen till his residence has given him some knowledge of our institutions and wants . . . . The time has come to restore to the country the safe and conservative policy of the old Constitution." On January 8, 1855, a bill<sup>62</sup> was introduced in the House by David Kilgore, the Republican Speaker of the House, which was designed to so amend the Constitution as to prevent aliens from voting until they were fully naturalized under the laws of Congress. Undoubtedly the franchise had been greatly abused. In his biennial message to the General Assembly on January 5, 1855, Governor Joseph A. Wright had urged the General Assembly to

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60. In the 36th session of 1851 there were 33 Democrats and 17 Whigs in the Senate, and 65 Democrats and 35 Whigs in the House. Indianapolis Journal, August 30, 1850. In the 37th session of 1853 there were 34 Democrats and 16 Whigs in the Senate and 68 Democrats and 32 Whigs in the House. Indianapolis Sentinel, October 29, 1852.

61. There were 57 Republicans and 43 Democrats in the House and 26 Democrats and 24 Republicans in the Senate. Indianapolis Sentinel, January 3, 1855, and Indianapolis Journal, January 4, 1855.

62. House bill No. 4. This bill contained three other proposed amendments.

establish all the guards and restrictions that may be necessary for the protection of the purity of the ballot box, and the security of the elective franchise.”<sup>63</sup> The Kilgore amendment proposed to strike out all that portion of Section 2, Article II, of the Constitution which refers to alien voters.<sup>64</sup> The proposed change would have restored the Constitution to substantially the form, except for shortening the period of residence, which was found in the Constitution of 1816. A month later, on February 14, the judiciary Committee,<sup>65</sup> to whom this bill had been referred, reported that a joint resolution was the form in which an amendment should be proposed and they therefore reported an amendment and recommended its adoption.<sup>66</sup> The Republicans endeavored to advance and the Democrats to retard the maturity of the resolution.<sup>67</sup> Later the joint resolution was divided into eight separate parts, each embodying a distinct amendment. The suffrage amendment was considered on March 2nd and passed the House by a vote of 55-29.<sup>68</sup> The resolution was reported to the senate but no action was taken.<sup>69</sup>

During the same session two other measures relative to the suffrage of aliens were under consideration. A memorial was presented and referred to a select committee but not subsequently considered,<sup>70</sup> and a joint resolution prescribing the suffrage qualifications of aliens was rejected by a vote of 46-35.<sup>71</sup>

The House Republicans, having practically ignored all other resolutions, devoted their attention to the passage of the suffrage qualification amendment. This amendment, as has been shown, passed the Republican House and was ignored by the Democratic Senate.

The political Conventions of 1856 all expressed themselves on the question of the extension of suffrage to aliens. The Democratic Convention of January 8 advocated the continuance of

63. House Journal, 1855, 35.

64. From “ . . . every white male, of foreign birth” to “naturalization.”

65. Consisting of 5 Republicans and 2 Democrats.

66. Embodied in Joint Resolution No. 11.

67. The vote on suspending the rules to advance the resolution to second reading was 59-25; 50 Rep., 8 Dem. and one Nat. Whig in favor, to 23 Dem.; one Rep. and one Nat. Whig opposed. A motion to indefinitely postpone the measure was lost by a vote of 52-33; 31 Dem., one Nat. Whig and one Rep. in favor and 48 Reps., 3 Dem. and one Nat. Whig opposed.

68. The vote was: 52 Rep., 2 Nat. Whigs and one Dem. in favor and 29 Dem., opposed.

69. House Journal, 1855, pp. 56, 67, 474, 781-784. Sentinel and Journal, March 3, 1855.

70. House Journal, p. 350.

71. Presented by Mr. Huffstetter, a Dem.; House Journal, p. 387, 443 and 541.

the existing naturalization laws and favored "that policy which will soonest assimilate naturalized citizens with the mass of our people" and opposed "that anti-American and illiberal policy which prescribes the foreign born citizen for the accident of birth, and drives him in self defense to antagonism with our native born citizens in feeling, political opinions and conduct."<sup>72</sup> The Republican Convention of May 1st endorsed the naturalization laws of Congress "with the five years probation" and insisted that the right of suffrage should accompany and not precede naturalization.<sup>73</sup>

At a Republican love feast held in Indianapolis on January 8, 1857, for the purpose of formulating a policy to be followed by the Republican members of the General Assembly, a resolution was adopted demanding the amendment of the Constitution so as "to limit the right of suffrage to citizens, either by birth or naturalization, under the present laws of Congress."<sup>74</sup> On the same day the Association of Republican Editors of Indiana adopted a similar resolution.<sup>75</sup> The State Convention of Americans which met in Indianapolis on February 17, 1857, adopted the same resolution.<sup>76</sup>

The campaign of 1856 was one of unusual bitterness. Know-nothingism was execrated by both of the leading political parties, while each was bidding for the large and increasing foreign vote. Such intemperate epithets as the "lop-ear Dutchmen" and the "red-neck Irish" flourished unchecked. On August 1, 1856, the Sentinel printed extracts from an editorial of the Indianapolis Journal which appeared in 1854 setting forth the Republican hostility to the political privileges of foreigners. "Every feeling of their souls", the quotation read, "were in deadly hostility to the man of foreign birth, and the people of Indiana were invoked to change their Constitution and their laws, in such manner as to effectually disfranchise foreign born residents of our State." On October 13, the day before the State election, the Sentinel gave a word of advice to voters. They admonished the electors to look well to their senators and representatives. Of the Republicans they said: "They only wait the opportunity to embody those doctrines (Knownothingism and Maine-Lawism)

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72. Indianapolis Sentinel, January 10, 1856.

73. New Albany Daily Ledger, May 3, 1856.

74. Indianapolis Journal, January 8, 1857.

75. Ibid.

76. Indianapolis Journal and Sentinel, February 18, 1857.



upon the statute book of the State. Every man of them is well known to be in favor of a change in the State constitution, by which the term of residence now required of foreign born voters shall be extended from one year to five." The elections resulted in an overwhelming Democratic triumph; although the senate was slightly Republican, the Democrats had a comfortable majority in the House.<sup>77</sup>

When the General Assembly convened on January 8, 1857, the demand for a radical change in the suffrage qualification section of the Constitution had grown pronounced, and six attempts were made to procure such amendments. Four of these measures were introduced by Democrats and two by Americans. In his biennial message to the General Assembly on January 9, 1857, Governor Wright called attention to some of the more flagrant scandals which had characterized the preceding general election. It was apparent to all that the laws had "failed to preserve the purity of the ballot-box." There was a difference of opinion as to the proper remedy to be applied to suppress this evil. An effort was being made "to direct public sentiment in favor of a registration of voters." The Governor doubted the efficacy of this method because "the practical working of the registry laws, in other states . . . had failed to convince him" of the adaptation of such laws to our community. The officer making the registry is as liable to be imposed upon as the judges of our elections; and as wide a field for fraud and corruption would be opened, as exists under the present system." The remedy which he proposed was to require "an actual residence in the township, or election precinct, of not less than sixty days prior to the time of voting and by the multiplying of election districts." This would prevent "the collecting of large bodies of voters at one place," lessen the "facilities for fraudulent voting" and minimize the "danger of excited and angry feeling." Moreover, "the right of suffrage will be exercised with more freedom and deliberation," and "the voters will be more generally known to each other and to the officers of the election." The penalties for illegal voting and for soliciting, intimidating and transporting voters should be

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77. Buchanan polled 118,672 votes; Fremont, 94,376; and Fillmore, the American candidate, 22,386. (*Sentinel*, November 27, 1856) Willard, the Democratic candidate for Governor, received 117,981 votes; Morton, the Republican, 112,139. (*Journal*, December 3, 1856). There were 63 Dem., 35 Reps. and 2 Americans in the House and 26 Reps., 23 Dem. and 1 American in the Senate (*Journal* November 10 and *Sentinel*, November 11, 1856).

increased.<sup>78</sup> On January 13, the senate adopted a resolution instructing the Judiciary Committee to determine and report whether the General Assembly had the constitutional authority to prescribe a residence period as a qualification for suffrage.<sup>79</sup> On the same day, that part of the Governor's message relative to illegal voting was referred to the Committee on Rights and Privileges.<sup>80</sup> On February 6, this committee reported a bill proposing a change in the Constitution fixing the period of residence at one year in the State. A week later, on February 12, the bill was referred to the Judiciary Committee; this committee reported favorably on February 17, and on February 26, the bill passed the House by a vote of 68-18. The bill was considered in the Senate on March 3, when an attempt was made to prescribe a five years' residential suffrage qualification.<sup>81</sup> Without definitely disposing of the bill, the Senate discontinued its consideration.<sup>82</sup>

On January 19, Mr. Wright introduced the American measure in the House. This resolution was designed to amend the Constitution so as to require foreigners to be naturalized citizens before they could vote and moreover to have a residence of forty days in the county and ten days in the precinct. On January 20, the resolution was indefinitely postponed by a vote of 62-31.<sup>83</sup>

On January 23, a bill was introduced in the House<sup>84</sup> proposing an amendment to the Constitution requiring a residential qualification of voters of forty days in the township and ten days in the precinct before voting. When the bill was on third reading several amendments were proposed. One amendment, prescribing a residence of twenty days in the county, was lost.<sup>85</sup> A second amendment proposed to provide for a residence of forty days in the county and ten days in the township.<sup>86</sup> In discussing this amendment, Mr. McDonald, a Republican, said that he understood the purpose of the bill to be to preserve the purity of the ballot box and he considered that a residence of forty days in the precinct was short enough. He was not actuated by political

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78. House Journal, 1857, 29.

79. Senate Journal, 1857, 74.

80. Consisting of 4 Democrats and 3 Republicans.

81. The proposal was made by Mr. Yaryan, a Republican.

82. House Journal, 1857, 84, 424, 535, 608, 657, 851; and Senate Journal, 590.

83. House Journal, 1857, 174, 186; Indianapolis Journal, January 21, 1857; Indianapolis Sentinel, February 7, 1857.

84. By Francis P. Smith, a Democrat.

85. The amendment was proposed by Mr. Blake, a Democrat.

86. Proposed by Mr. Studabaker, a Democrat.

preferences in the matter, and did not know whether "A Jeffersonian Democrat, an old liner or a Republican" had introduced the bill. The amendment was lost by a vote of 54-29.<sup>87</sup> A third amendment was designed to limit the right of suffrage to native born and naturalized citizens, without making any change in the naturalization laws. This amendment was advocated by Mr. Gordon, a Republican. He was unwilling, he said, to confer the right of suffrage on uninformed foreigners; there was a large class of persons in the State who in case of war could not be executed as traitors because they were not citizens, and on this class of voters the demagogues operated extensively. The bill failed to pass for want of a constitutional majority, the vote being 49-38.<sup>88</sup> On March 4, the bill was taken up for consideration again and passed by a vote of 63-23. The senate took no action on the bill except formally receiving it.<sup>89</sup>

The first proposed amendment ever introduced in the senate was presented on February 9, 1857, by Mr. Sage.<sup>90</sup> This resolution proposed to change the suffrage qualifications of electors; the exact provisions of the amendment are not known; the resolution was referred to a select committee consisting of one Democrat, one Republican and one American. A majority of the select committee the Republican and American, reported a substitute which eliminated all reference to foreigners, prescribed a six months' period of residence in the State and thirty days in the township or precinct. The minority report probably represented the Democratic reaction on this question. It contended that since the Constitution was adopted by such a large majority, and since no petitions for a change had been presented it would be inexpedient to make any changes; a large number of alien citizens then exercising the right of suffrage would be disfranchised by this proposed amendment and its passage would produce jealousies. All further action on the amendment was discontinued.<sup>91</sup>

The General Assembly of 1857, as we have seen, adjourned without agreeing to an amendment altering the right of suffrage.

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87. The vote was: 26 Democrats and 3 Republicans in favor of adopting the amendment and 27 Democrats and 25 Republicans and 2 Americans opposed.

88. The vote was: 27 Democrats, 21 Republicans and one American in favor of passage and 29 Democrats and 9 Republicans opposed.

89. House Journal, 1857, 228, 243, 502, 537, 594; Indianapolis Journal, January 24, and February 17, 1857, and Indianapolis Sentinel, February 17, 1857. Vote on final passage: In favor, 40 Republicans, 21 Democrats and 2 Americans; opposed, 14 Democrats and 9 Republicans.

90. An American.

91. Senate Journal, 1857, 315, 366, 529, 669.



As the House was Democratic and the Senate Republican, and the feelings of the members embittered by recent political contests, there was a dead-lock on many important measures. The imbroglio over the election of United States senators had been rekindled anew by reason of certain contested seats in the State senate and when the sixty-one days had expired no appropriation bill had been passed. The precarious condition in which this left the State institutions made the calling of a special session imperative; but because of "a want of harmony" among the members of the General Assembly just closed, the Governor deferred the calling of a special session until after the elections of 1858.<sup>92</sup> The General Assembly elected in 1858 was almost equally divided in politics. There were twenty-five Republicans and twenty-five Democrats in the Senate, and fifty-one Republicans and forty-nine Democrats in the House.<sup>93</sup> The special session began on November 20, and adjourned on December 25, 1858.

The only measure considered during the special session, proposing to change the suffrage qualifications, was introduced in the House on December 1st, by Mr. Gregory, a Republican. This bill was intended to restrict the right of suffrage to white male citizens of the age of twenty-one years and upward who had resided for six months in the State and who had besides a residence in the township or precinct. The Committee on Rights and Privileges to whom this measure was referred returned an unfavorable report and recommended that "legislation on the subject (was) unnecessary." Subsequently the bill was referred to a select committee,<sup>94</sup> but no report was made at this session.<sup>95</sup>

The consideration of bills and resolutions designed to procure amendments to the Constitution ended on December 16. Two days later the Indianapolis Journal summed up the arguments for radical changes in the Constitution. The Journal insisted that "The present State Constitution is radically defective in several particulars: It prevents the passage of a wholesome election law, as it prescribes upon its face the qualifications of voters, and no

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92. Governor's Proclamation and Message, House Journal, Special Session, 1858, 3, 18.

93. Of the 25 Republican senators, 13 were hold-overs and 12 were newly elected; of the 25 Democratic senators, 10 were hold-overs and 15 were newly elected. Of the newly elected Democratic senators, 12 were old line and 3 Anti-Lecompton. There were 4 Anti-Lecompton Democrats in the House. Indianapolis Journal, October 23, 1858.

94. Gregory, Blythe, Branham, Hamilton of Boone and Mellett.

95. House Journal, Special Session, 1858, 83, 94, 195; Brevier Reports, Special session, 1858, 67, 75, 123.

statute can be passed defining or limiting them.” By this defect “election frauds have become as notorious as divorce cases.” Immigration, transportation and double voting were encouraged and the purity of the ballot box was a farce. “We need a constitutional provision requiring a residence of months in the township before a vote can be given, and allowing a registry law, if it should be needed.”<sup>96</sup>

In his message to the Fortieth regular session of the General Assembly, delivered on January 7, 1859, Governor Ashbel P. Willard, in discussing the election laws, said that they were “inadequate to protect the suffrages of honest men against fraud . . . men have left the county of their residence, gone to others, where they had no permanent homes, where they did not intend to remain longer than the day of election, have there cast their votes, and thus determined who should be the officers and representatives of the counties they visited.” He recommended the passage of laws inflicting severe penalties on persons guilty of such flagrant abuses.<sup>97</sup>

The most important constitutional measure under consideration at this session was the bill providing for the calling of a constitutional convention.<sup>98</sup> While that measure was under consideration, the opponents of the project insisted that there were comparatively few people who desired a constitutional convention, and that among these were those persons who desired to exclude foreign born citizens from the polls, which was an unworthy sentiment and which had no place but “in the hearts of the lingering, unlamented remains of the Know Nothing party.” But “even the fanaticism of Know Nothingism . . . did not venture to lay hands upon it for amendment” in 1855. “The peculiar ‘friends of freedom’ also desire it . . . to give them a fresh opportunity to clamor for the rights of the black race.” The proponents of a constitutional convention insisted on the necessity of an amended constitution to enable the General Assembly to enact wholesome election laws, including a registration law. The existing system admitted “whole shoals of emigrant voters for want of the constitutional power to fix some time to constitute a residence.” The law, said Kempf, a Democrat, should be made to correspond to “the good old Jeffersonian doctrine, as it exists in the naturalization laws of the country.”

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96. Indianapolis Journal, December 18, 1858.

97. House Journal, 1859, 22.

98. See p. 448, Vol. II.

The passage of the bill providing for the submission of the question of calling a constitutional convention rendered other measures of secondary importance. Mr. Gregory's bill, which had been under consideration at the special session, was reintroduced.<sup>99</sup> Mr. Kempf likewise introduced a bill, the provisions of which were identical with Gregory's bill. Both bills were referred to a select committee of five.<sup>1</sup> The committee reported that they considered the provisions of these bills "reasonable and just"; the portion of the Constitution which this proposed amendment was designed to correct was "derogatory to the naturalization laws as adopted by Congress, and we think it unwise and unsafe policy to have local laws conflicting with national laws." In advocating the passage of this bill, Mr. Gregory insisted that it was both necessary and just and that the people should be allowed the opportunity of expressing themselves on the question; the State constitutional provision conferring suffrage on aliens was in derogation of the Federal Constitution; it was adopted by the convention as a matter of party politics, both Democrats and Whigs desiring to wheedle aliens into support of their party; he thought there might be both Democrats and Republicans who would refuse to vote for the amendment for fear of "offending some of their constituents of foreign birth." Mr. Kempf insisted that aliens should be required to reside five years in the United States and six months in the State and also file their intentions to become citizens before voting; the Indiana Constitution permitted citizens to vote after they had resided in the United States six months. He was of foreign parentage, of German extraction, and a great portion of his constituents were foreigners, but they would not object to the proposed change. The present provision was unfair and unjust to the native born population. The report of the committee was laid on the table by a vote of 51 to 42.<sup>2</sup>

The Democratic State Convention of 1860 adopted a resolution deprecating the attitude of the Republicans toward foreign born persons.<sup>3</sup> The Republicans went on record in opposition to

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99. See p. 448, Vol. II.

1. Consisting of 4 Republicans and 1 Democrat, Kempf, who was favorably disposed.

2. Indianapolis Journal, January 22, 1859; House Journal, 1859, 176, 59, 140; Brevier Report, 1859, 64, 25, 48. The New Albany Courier called Kempf a "bogus Democrat."

3. Indianapolis Sentinel, January 13, 1860.



any change in the existing naturalization laws.<sup>4</sup> The year 1860 was one of unusual political agitation and turmoil. The Republicans were victorious both at the October and November elections, and controlled both branches of the General Assembly.<sup>5</sup>

In his message to the General Assembly on January 11, 1861, Governor A. A. Hammond, the retiring Governor, denounced the election law as "defective" and not such as to "insure a fair and honest expression of public sentiment." In consequence of this defect in the law, "citizens of one county have, on the day previous to the election, emigrated to another county expressly to control the election." He recommended the passage of laws "fixing the residence in the county necessary to entitle one to vote, at a period that will make it unprofitable for bad men to change their residence for voting purposes alone."<sup>6</sup> In his inaugural address, Governor Henry S. Lane, who was inducted into office on January 14, condemned the election laws and recommended that they be completely changed.<sup>7</sup>

The conviction that some change should be made in the Constitution relative to the residential qualifications of electors was universal. Two methods were proposed to effect this change: the first was designed to secure an appropriate amendment to the Constitution; the second to enact a registration law under the provisions of the Constitution as then existing. A registration bill was introduced in the House on January 23.<sup>8</sup> This bill required a voter to have a residence of thirty days in the township and sixty days in the county previous to voting. The bill was referred to the Committee on Elections<sup>9</sup> and they reported that the measure was "not only inexpedient, but doubtless unconstitutional." The bill was then referred to the Judiciary Committee and this committee reported adversely on February 13, on the theory that it was impossible to prescribe any other residence qualifications than those provided in the Constitution itself.<sup>10</sup>

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4. Indianapolis Journal, February 23, 1860.

5. Lane, the Republican candidate for Governor, received 136,725 votes and Hendricks, the Democratic candidate, 126,968. Lincoln's vote was 139,033; Douglas', 115,509; Breckinridge's, 12,294; Bell's, 5,306. There were 28 Republicans and 22 Democrats in the Senate and 62 Republicans and 38 Democrats in the House. (Indianapolis Journal, December 4 and 14, 1860, and January 10, 1861; Indianapolis Sentinel, October 16, 1860).

6. House Journal, 1861, 30.

7. Ibid., 62.

8. Introduced by Mr. Turner, a Republican.

9. Five Republicans and 2 Democrats.

10. House Journal, 1861, 161, 308, 392; Brevier Report, 1861, 93, 209; Journal, January 24, 1861.

On January 28, a similar bill was proposed in the same House. On February 5, when the bill came up for consideration, a substitute was proposed, prescribing a residence of one year in the United States, six months in the State, a declaration of intention, and a residence of unspecified duration, "in good faith" in the township, precinct or ward; in the case of a married man, the term "residence" meant the place where his family resided, and in the case of a single man, where he "regularly sleeps." The bill was reported adversely with the Turner registration bill of January 23.<sup>11</sup>

The doubtful constitutionality of these proposed registration measures led to the introduction of two resolutions in the House, one on January 21, and another on January 23, instructing the Committee on Rights and Privileges and Judiciary Committee to inquire into the expediency and constitutionality of requiring a residence of sixty days in the county and thirty days in the precinct as a qualification for voting.<sup>12</sup> The Senate approached the problem in a different manner by attempting, unsuccessfully, on January 25, to secure an ex parte opinion of the Supreme Court as to whether laws could be enacted prescribing a residence period in the voting district and whether a registration law, if enacted, would be constitutional.<sup>13</sup>

The acceptable and successful measure was introduced in the Senate on January 18th, by Mr. March, a Republican. This measure provided for the adoption of a constitutional amendment to prevent fraudulent voting, by authorizing the General Assembly to fix the length of time during which an elector must reside in the county, township, precinct or ward, and to ascertain that fact by proper proofs. The resolution passed the Senate on February 2, by a vote of 38-2, and the House on February 27, by a vote of 88-2.<sup>14</sup>

On January 14, 1863, Senator March introduced his suffrage resolution, which had been adopted in 1861. On January 23, the resolution was reported favorably by the Committee on Education and passed the Senate without opposition by a vote of 35-2.<sup>15</sup> On January 28 after second reading in the House, the Senate resolution was referred to the Committee on Elections and was

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11. House Journal, 227, 320, 321, 392.

12. Ibid., 154, 173.

13. Senate Journal, 1861, 160.

14. Senate Journal, 1861, 108, 237, 660; House Journal, 397, 659, 672; Laws, 1861, 185.

15. Brevier Report, 1863, 78; Senate Journal, 1863, 70.

not subsequently considered. Meantime, on January 21, Mr. Cason, a Republican, had introduced the same resolution in the House; on January 27, the resolution was referred to the Committee on Elections, and on January 29, after the Senate resolution had been submitted to them, the committee submitted a divided report. By a vote of 25-61, the House refused to postpone the measure and it was then referred to the Judiciary Committee and was never reported back to the House.<sup>16</sup> The proposed amendment encountered considerable opposition in the House. The opponents of the measure alleged that the adoption of the amendment would permit "too wide a range for legislation" and that no man should be prohibited from voting if he took an oath that he was legally entitled to vote. Other members opposed the adoption of the amendment because they hoped to see a convention called to remodel the Constitution, especially in view of the disturbed condition of federal relations. The advocates of the measure adverted to the glaring election frauds which were inevitable because there were no residence restrictions prescribed by law, a regulation which was impossible as long as the Constitution was unchanged.<sup>17</sup>

During the War, the proposed franchise amendments received little consideration. In 1865, the House adopted two resolutions instructing the Judiciary Committee to inquire into the expediency and constitutionality of amending the election law to prevent fraudulent voting and to require all voters to register and to have a residence of forty days in the township before voting,<sup>18</sup> but no reports were ever returned. Two years later, in 1867, in his biennial message of January 11, Governor Morton reviewed the continued election corruptions and recommended the passage of a registration law, declaring it as his conviction that such a law, if enacted, would be constitutional. It seemed worth while to make the experiment, and a registration law was therefore passed and approved on March 11, 1867. The passage of this law afforded a temporary safeguard against corrupt election practices, but its beneficent effects were of short duration, for in 1869 it was declared unconstitutional by the Supreme Court and the honest voters were once more left defenseless against the immoral practices of unscrupulous politicians. In spite of these untoward conditions, no concerted effort was subsequently made to secure

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16. House Journal, 1863, 134.

17. Brevier Reports, 1863, 103.

18. House Journal, 1865, 111, 131.



electoral reform until 1873. In his inaugural address of January 13, Governor Hendricks insisted that laws must be enacted to safeguard the ballot-box; however, since the passage of satisfactory laws was clearly impossible without securing a change in the Constitution, he recommended the adoption of an amendment enabling the General Assembly to prescribe a reasonable period of residence in the voting precinct before the right of suffrage was acquired. He was opposed to calling a convention for that purpose since the Constitution "wisely provides for its own amendment, by a convenient and economical proceeding" and, moreover it would be "unnecessary to throw upon the people the expense of a convention", and "the possibility of change not desired by them would be avoided."<sup>19</sup> In pursuance of the Governor's recommendations, a select joint committee of three senators and five representatives was appointed to report the necessary amendments to the General Assembly. The reports of this committee to the two houses were identical and were submitted on March 8, and no difficulty was encountered in securing their adoption. The suffrage amendments proposed fixed the residential qualifications of electors at twelve months in the State, three months in the county and thirty days in the township or precinct; conferred the right of suffrage on negroes and removed their other political disabilities; and based the sexennial enumeration on all male citizens above the age of twenty-one years, including negroes. All of these amendments were adopted by substantial majorities,<sup>20</sup> and were referred to the next General Assembly for consideration. Unsuccessful attempts were made to reduce the residence period in the State from twelve to six months,<sup>21</sup> and to eliminate all reference to residence in the county.

At the succeeding session of 1875, the pending suffrage amendments were introduced in the House on January 15, and in the Senate on January 22, and in each case were referred to the Judiciary Committee. In the House, the resolutions were reported back without recommendation on January 27, and were indefinitely postponed on February 10, by a vote of 50-41. On Feb-

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19. House Journal, 1873, 80.

20. The residence qualification amendment passed the House by a vote of 77-8, and the Senate by a vote of 30-6; the amendment conferring the right of suffrage on negroes was adopted by the House by a vote of 68-9 and the Senate by a vote of 28-7; the amendment basing the sexennial enumeration on all male citizens above the age of 21 years was adopted by the House by a vote of 69-6 and by the Senate by a vote of 27-9.

9. House Journal, 1873, 214; Senate Journal, 1031; Laws, 248.

21. Lost by a vote of 22-18.

ruary 18, a week after the same resolution had been indefinitely postponed in the House, the Senate committee returned a favorable report, and although the measures were placed on the calendar they were permitted to expire for want of consideration.<sup>22</sup>

In his message to the General Assembly of 1877, on January 5, Governor Hendricks recommended the readoption of these amendments and insisted especially that a residence of sixty days in the precinct should be prescribed for electors.<sup>23</sup> Substantially the same amendments which had been adopted in 1873 and defeated in 1875 were adopted by the session of 1877,<sup>24</sup> and on recommendation of Governor Williams,<sup>25</sup> readopted in 1879 and submitted to the voters for ratification in 1880. When these measures were under consideration in the House an unsuccessful attempt was made to amend the amendment so as to require of the voters a tax receipt. The residence qualification amendment was opposed on the theory that it would disfranchise from 10,000 to 20,000 workmen who were obliged to move frequently in order to obtain employment. The registration provision was opposed because of the expense involved and because it would be of little practical value.<sup>26</sup> These amendments, after being declared null and void by the Supreme Court in *State v. Swift*, were resubmitted to the electors at a special election in 1881 and adopted by a substantial majority and by virtue of the Governor's proclamation incorporated in the Constitution. The long struggle for the reform of the franchise had terminated; but aside from providing for the passage of a registration law, which was not actually accomplished, until 1911, thirty years after, the victory was fruitless so far as electoral reforms go; the negro and mulatto population was enfranchised by the amendment of the Federal Constitution and the amendment of the State Constitution was for all practical purposes a work of supererogation.

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22. House Journal, 1875, 160.

23. Senate Journal, 50th Session, 34.

24. The amendment extending the right of suffrage to negroes, prescribing residential qualifications for electors and authorizing the General Assembly to enact a registration law passed the Senate in 1877 by a vote of 39-4 and in 1879 by 37-12; and the House in 1877 by a vote of 81-2 and in 1879 by 60-34. The amendment deleting the provision denying the right of suffrage to negroes passed the Senate in 1877 by a vote of 40-1 and in 1879 by a vote of 43-0; and the House in 1877 by a vote of 78-2 and in 1879 by a vote of 95-1. The amendment basing the sexennial enumeration on all male citizens above the age of 21 years passed the Senate in 1877 by a vote of 41-1 and in 1879 by a vote of 47-1; and the House by a vote of 71-8 in 1877, and by a vote of 89-3 in 1879.

25. House Journal, 51st Session, 31.

26. Senate Journal, 50th Session, 614, 616, 617; Brevier Report, 1879, 27, 30, 88; Laws, 51st Session, 51, 52, 53.

The agitation for changes in the suffrage provisions of the Constitution completely subsided until 1889 and it was brought into prominence at that time by the influx of a large alien population. The conditions existing just subsequent to the adoption of the Constitution and prior to the outbreak of the Civil War were reproduced; they have constantly grown worse; and all attempts to safeguard the electorate during the last twenty-five years have been directed to restricting the right of suffrage to native born citizens and to aliens who have resided in the United States for a sufficient length of time to enable them to become familiar with American institutions. The suffrage amendment proposed in 1889 extended the time which a citizen must reside in the State before being entitled to vote, from six months to one year. The amendment encountered no opposition and was adopted by the House by a vote of 87-0, and by the Senate by a vote of 43-0.<sup>27</sup> At the beginning of the session of 1891, serious doubts existed as to the legality of this and other pending amendments and hence a select House committee was appointed to investigate the question.<sup>28</sup> The committee presented a divided report; the majority of the committee considered that part of the pending amendments, not including the suffrage amendment, were properly pending; a minority of the committee found that because the joint resolutions embodying the proposed amendments to the Constitution had not been signed by the presiding officers of the two houses, nor properly enrolled and filed with the Secretary of State, they were therefore not legally pending. The doubt as to their legal adoption was indeed so grave that it would probably be useless to readopt them and submit them to the people for ratification.<sup>29</sup> After having reconsidered the matter, the committee returned a unanimous report expressing doubts as to the legality of the adoption of the pending amendments and recommending that they be voted down and other amendments proposed instead.<sup>30</sup> The amendments were then taken up singly and voted down by a substantially unanimous vote.<sup>31</sup> Meantime the Senate had instituted an inquiry as to the validity of the pending amendments but they arrived at no definite conclusion.<sup>32</sup> The House committee did not include

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27. Senate Journal, 56th Session, 1507.

28. House Journal, 57th Session, 201.

29. House Journal, 57th Session, 1255 and 1256.

30. Ibid. 1461.

31. Ibid., 1464.

32. Senate Journal, 57th Session, 143 and 145.



the suffrage amendment among those proposed *de novo* and no further action was taken on the subject at this session.

No further attempt was made to readjust the constitutional suffrage qualifications until 1895 when a resolution was introduced in the House proposing to amend the Constitution to require aliens to reside in the United States five years, in the State six months and to be fully naturalized citizens before acquiring the right to vote. This measure, it will be observed, was as stringent as the amendments proposed in 1855 when the political philosophy of the country was seriously tinctured by Know-Nothingism. In spite of that fact the resolution was reported favorably by committee and passed the House by a vote of 67-11; in the Senate, however, although the committee had reported favorably, the measure was defeated by a vote of 21-13.<sup>33</sup> At the same session, a resolution designed to confer the right of suffrage on women, was under consideration; this resolution proposed that all aliens should reside in the United States five years before being permitted to vote. The resolution was lost without consideration.<sup>34</sup>

In 1897 no constitutional measures were proposed but attempts were made in other ways to safeguard the purity of the ballot. One bill, Senate 102, providing for the registration of voters, was introduced, but it failed of passage. Three bills designed to authorize the use of voting machines were introduced. One of these measures, Senate bill No. 293, was intended to permit the use of voting machines at all regular elections; a second bill, Senate No. 374, permitted their use in municipal elections only; both bills were indefinitely postponed. A bill on the same subject, No. 564, actually passed the House but was not adopted by the Senate. At the following session, the voting machine problem was solved by the passage of an act permitting their use at elections.

In 1905 an attempt was made to so amend the suffrage provisions of the Constitution as to impose a literacy and tax test and to provide for permanent registration lists. This proposed amendment provided that any elector offering to vote must produce a receipt showing that he had paid his poll tax for the current year; moreover, after the year 1909, every person presenting himself for registration must produce satisfactory evidence of ability to read and write. By the same amendment the General Assembly was authorized to provide for permanent registration lists so that any voter, once registered, need not register again except for change

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33. Senate Journal, 59th Session, 544.

34. House Journal, 59th Session, 865.

of residence or temporary disfranchisement. This resolution was introduced in both houses and was indefinitely postponed.<sup>35</sup> At the session of 1907 this same resolution was introduced in the Senate; on first consideration it failed to pass for want of a constitutional majority, the vote being 21-18; on second consideration it failed by a vote of 23-19.<sup>36</sup>

At the same session, 1907, an amendment was proposed requiring aliens to be fully naturalized before acquiring the right to vote but the measure was indefinitely postponed.<sup>37</sup> In 1909, a bill was introduced in the Senate, No. 263, requiring all voters at municipal elections to exhibit a poll tax receipt, but the bill was never reported from committee.

In his message to the General Assembly on January 8, 1909, Governor Hanly referred to the "unusual influx of persons of foreign birth during the last five years", and said that this fact had suggested to thoughtful men the propriety of extending the time of residence within the State before the right of suffrage was acquired. The Governor thought this could not be done without amending the Constitution and he, therefore, recommended the passage of a registration law.<sup>38</sup> No attempt was made during this session to enact a registration act but an amendment prescribing a year's residence in the State before voting was proposed in the House by Mr. Edward W. Wickey, a representative from one of the northwestern counties where the growth of alien population in Gary and Hammond and East Chicago had been most rapid. This proposed amendment was never reported back from committee.<sup>39</sup>

During the sixty-seventh session of 1911 a determined effort was made to secure certain changes in the Constitution, among which the suffrage provisions came in for special consideration. These proposed amendments were incorporated in the famous Senate bill No. 407 which is popularly known as the Marshall Constitution and which was held null and void by the Supreme Court in the case of *Ellingham v. Dye*. In his message to the General Assembly on January 5, Governor Marshall called attention to the fact that "there are certain provisions of our Constitution which do not meet present conditions . . . certain clauses which might be changed with value to good government.

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35. Senate Journal, 64th Session, 304.

36. Senate Journal, 65th Session, 135.

37. House Journal, 65th Session, 155.

38. Senate Journal, 66th Session, 55.

39. Original Resolution.

One of these is the electoral clause with reference to foreign-born citizens. So shifting is much of this foreign-born citizenship, so ignorant is it of our system of government, so little interested is it in our public affairs, and so wholly is it within the control of the political and business bosses that this franchise should be curtailed.’’<sup>40</sup> The electoral changes proposed by the Marshall Constitution prescribed a residence of twelve months in the State of all electors the payment of all poll taxes due and payable during the current year;<sup>41</sup> and ability to read English or some other known language after November 1, 1913.<sup>42</sup> This act, as has been explained above, was declared unconstitutional and hence the electors never had the opportunity of either approving or disapproving the proposed electoral changes. At the session of 1913, the more important amendments incorporated in the Marshall Constitution were proposed again as a series of amendments and adopted and are known generally as the Stotsenburg amendments. The electoral changes proposed in the Stotsenburg amendments raised the residence qualifications of electors to twelve months and authorized the General Assembly to enact a registration law exempting from registration electors residing in counties having a population of less than 50,000 inhabitants.<sup>43</sup> At the session of 1915 all of these amendments were rejected and hence the electoral provisions of the Constitution as fixed by the amendment of 1881 are still in force.

**Date of General Election.**—The amendment providing for changing the date of holding general elections from the first Monday in August to the Tuesday after the first Monday in November was first presented in 1872, but was immediately withdrawn. In 1873, a resolution was adopted by the House, by a vote of 66-1, providing that the general elections should be held on such date as might be fixed by the General Assembly. The Senate amended this resolution to provide that the general election should be held on the first Tuesday after the first Monday in

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40. House Journal, 67th Session, 19.

41. The suffrage section also provided that “all poll tax shall be payable in full at the spring payment of taxes, and may be paid separately from other taxes at the option of the taxpayer.” This is a rather curious constitutional provision since the practice of paying taxes in two installments is fixed by law and may be altered at the discretion of the General Assembly. Hence a Constitutional provision is made to rest on a practice regulated by statute. Whether this law would be subject to repeal if the Marshall Constitution had gone into effect with this provision, Quare?

42. Laws, 1911, 205.

43. House Journal, 68th Session, 2143.



November until otherwise provided by law, and as thus amended it was concurred in by the House.<sup>44</sup> At the session of 1875, the resolution was re-adopted by the Senate but was never advanced beyond third reading in the House.<sup>45</sup> In 1877, Governor Hendricks recommended a change in the date of holding the general elections and urged the General Assembly to adopt the amendment agreed to in 1873 and rejected in 1875.<sup>46</sup> Accordingly, the amendment was adopted in 1877 and re-adopted in 1879 and submitted to the electors with the other group of amendments in 1880. It failed of adoption for want of a constitutional majority and was resubmitted in 1881, and adopted and incorporated in the Constitution.

**The Elective Franchise—Enabling Soldiers to Vote**—Beginning in 1863 and continuing through the Civil War, a constitutional amendment, enabling the soldiers in the field to vote, was repeatedly proposed and strenuously advocated. Prior to 1865, the number of soldiers actually enlisted in the army, and, therefore, removed from their precincts, and deprived, as a consequence, of the right of suffrage, was 165,314. As the Democrats, who were generally disinclined to a vigorous prosecution of the War, were in the ascendancy in the General Assembly of 1863, and as the Republicans, who alleged that their party vote was reduced because the soldiers were unable to vote, strenuously advocated the adoption of an amendment extending the right of suffrage to soldiers in the field and camp, the proposed amendment became a partisan measure and was buffeted about and finally fell a victim to parliamentary filibustering. On January 8, 1863, the first day of the session, the House adopted a resolution instructing the Judiciary Committee to inquire into the expediency of reporting an amendment to the Constitution enabling soldiers to vote.<sup>47</sup> Four days later, on January 12, an unsuccessful attempt was made to instruct the Senate Judiciary Committee to report on the constitutionality of enacting a law enabling soldiers to vote.<sup>48</sup> As neither of these projects gave any promise of success, Mr. Cason, a Republican, on January 16, introduced a resolution in the House proposing an amendment to the Constitution enabling soldiers in the field to vote. On January 27, the resolution was referred to

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44. House Journal, 48th Session, 932, Laws, 249.

45. Ibid., 49th Session, 1296.

46. Senate Journal, 50th Session, 34.

47. House Journal, 1863, 14.

48. Senate Journal, 1863, 25.

the Committee on Elections; on January 29, the committee returned a divided report, and the resolution was referred to the Judiciary Committee. On February 4, the Judiciary Committee reported that such an amendment would not only be inexpedient but also unconstitutional, as another amendment was still pending consideration by the General Assembly. It will be recalled that this same Judiciary Committee had in its charge Mr. March's suffrage qualification amendment which they refused to report, either favorably or unfavorably, although it had already passed the Senate by a practically unanimous vote, and which was probably being held to defeat other proposals and enable them to prefer specious objections to a worthy and imperative measure.<sup>49</sup> The House, however, concurred in the recommendations of the committee by a vote of 42-33.<sup>50</sup> The people, meantime, were somewhat aroused over the dilatory tactics of the General Assembly and on March 7 a petition from the citizens of Noble county was presented in the House requesting the passage of a law conferring the right of suffrage on the soldiers in camp and field, and, although such a measure was undoubtedly unconstitutional, a bill was introduced in the Senate, and under suspension of the rules, by a vote of 37-1, it was referred to the Judiciary Committee and reported back the same day for lack of time to consider.<sup>51</sup>

Although the soldier amendment had been cleverly pigeon-holed by the 43d General Assembly, it had not ceased to be a vital issue and the large number of enlistments accentuated the importance of the question. In the 44th General Assembly of 1865, the Republicans were rather more favorably situated. Although the Senate was evenly divided, they commanded 55 votes in the House and they could also rely on some of the 45 Democratic votes. Accordingly, on January 6, Governor Morton, in his biennial message, recommended the adoption of the proposed soldier amendment and asserted that the fact that the soldiers could not vote was a grave and indefensible "political injustice." However, he reminded the legislature that since it would be two or three years at the least before the amendment could be adopted and become a fully operating part of the Constitution, this fact probably rendered the legislators indifferent on the question. At all events no amendment was adopted, although several measures were under consideration. On January 6, Mr. Bonham, a Demo-

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49. See p. 477, Vol. II.

50. House Journal, 1863, 102.

51. Senate Journal, 1863, 568.

crat, introduced a resolution in the Senate proposing a constitutional amendment extending the right of suffrage to soldiers, and to guard against fraudulent voting. On January 10, when the resolution was under consideration an amendment was proposed to provide for the substitution of viva voce voting for voting by ballot, and both the original resolution and the proposed amendment were referred to the Judiciary Committee. On January 25, the committee returned the original resolution with a slight amendment and recommended its adoption; and on January 31, on recommendation of the committee, the proposed viva voce voting amendment was laid on the table as the change was "neither necessary or advisable."<sup>52</sup> Although the soldiers amendment was before the Senate with a favorable report, it was not pressed to maturity, and, without subsequent action on the measure, the General Assembly adjourned. Meantime, in the House, attempts were made to pursue a more expeditious if less constitutional course. On January 17, a resolution was adopted instructing the Committee on Elections to inquire into the expediency and constitutionality of conferring on soldiers, by law, the right to vote. As no report was presented, an unsuccessful attempt was made on February 1, to commit the House to a categorical declaration that, without a constitutional amendment, soldiers might be granted the franchise by the enactment of an appropriate law.<sup>53</sup>

As the war had been brought to a successful termination shortly after the adjournment of the General Assembly of 1865, the immediate necessity of conferring on soldiers the right to vote had been eliminated and the demand for a constitutional amendment on that question was not subsequently revived. It has, in fact, never become a serious question until the present year (1916), when the mobilization of the federalized State militia on the Mexican border has revived the question as to the right of the soldier to vote, and an authoritative construction of the constitutional provision has recently been given by Attorney-General Stotsenburg, in which he declared that no soldier absent from his voting precinct on election day has any legal right to exercise the elective franchise.

In 1865, a measure of cognate interest was presented in the House. This resolution proposed to instruct the Judiciary Committee to inquire into the propriety and constitutionality of enact-

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52. Senate Journal, 1865, 23.

53. House Journal, 1865, 250.



ing a law to deprive persons of the right of suffrage who had fled from the State to avoid the military draft. The proposition was rejected,<sup>54</sup> and with the failure of this measure the consideration of all resolutions defining the electoral rights of the military forces of the State was discontinued.

**Woman Suffrage.**—As a question for serious political consideration, woman suffrage first came into prominence in this State at the special session of the General Assembly in 1865. On December 4 of that year, Mr. Laselle<sup>55</sup> introduced a resolution in the House proposing an amendment to the Constitution conferring the right of suffrage on women. The resolution was referred to the select Committee on Constitutional Amendments and on December 14, this committee brought in an elaborate report recommending a favorable consideration of the measure. The question, they said, was “a very novel and important one” and involved “questions of the highest moment to the female sex in particular” and to the community of the State in general. It had never before “arisen in such form as to elicit discussion in any legislative body, or by the public generally, and it is invested with many speculations as to the expediency and effect upon the condition of society.” As a “question of abstract right” the committee concluded that “females are entitled to the right of suffrage.” But “as to the political and moral results of the grant and exercise of this right” they were not so clear; however, they thought it “would not only tend to exalt and ennoble the sex themselves, but would eventually tend to promote the general welfare.” The report of the committee was laid on the table and not subsequently considered.<sup>56</sup>

A half dozen years elapsed before the question again assumed sufficient prominence to challenge the attention of the General Assembly. On January 10 and 16, 1871, two petitions were presented in the Senate asking that the Constitution be so amended “as to remove all legal and political disabilities of women.” Moreover, the Woman’s State Suffrage Association had asked leave of the General Assembly to formally present a petition in favor of woman suffrage and this request was granted by a concurrent resolution adopted by both Houses. Accordingly, on January 20, the Senate proceeded to the House chamber, and upon invitation of the Lieutenant Governor, Miss Amanda Way,

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54. House Journal, 130.

55. A Democrat.

56. House Journal, called Session, 1865, 316, 455.

who had the memorial in charge, formally presented it. Immediately after the adjournment of this joint meeting Mr. Beeson<sup>57</sup> presented a resolution in the Senate proposing an amendment to the Constitution conferring the right of suffrage on women when the amendment should have been approved by a majority of the women of the State. On February 14, the committee brought in a divided report. The majority report was unfavorable on the theory that they regarded the submission of this question as "undesirable by the people and inexpedient at this time." The minority report, signed by Mr. Beeson and Mr. Dwiggins, proposed an amendment to the Constitution expressly conferring the right of suffrage on women. However, the proposed amendment was to be submitted to the qualified electors for ratification rather than to the women themselves as had been proposed in the original resolution. On the following day, February 15, the resolution was considered as a special order. The proposed amendment was amended by a vote of 25-22 so as to confer the right of suffrage on white females only; the minority report was then rejected by a vote of 27-20 and the majority report by a vote of 28-20 and the consideration of the question was discontinued.<sup>58</sup>

In 1873 when the residential suffrage amendment was under consideration an attempt was made in the House and in the Senate to strike out the word "male" and thus confer the right of suffrage on females.<sup>59</sup> Meantime, with his message of January 10, 1873, Governor Baker transmitted a memorial of The American Woman Suffrage Association asking the General Assembly for a hearing on the propositions therein set forth, and to this request the Governor added his recommendation, since the subject was "worthy . . . of the most thoughtful consideration." For his part, he said, "I am willing to give my vote and influence in favor of conferring the right of suffrage on the women of Indiana whenever they shall with any considerable degree of unanimity signify a desire to assume the responsibilities which such a change in their relations to the State would impose."<sup>60</sup> On January 17 a joint meeting of the two houses was held to consider the memorial and the addresses of suffrage leaders. This memorial petitioned the General Assembly to confer on women the right to participate in the selection of presidential

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57. A Republican.

58. Senate Journal, 47th Session, 235, 603.

59. Brevier Report, 1873, 257.

60. House Journal, 48th Session, 26.

electors and all statutory State and local officers and to take the necessary steps to abolish all political distinctions on account of sex.<sup>61</sup> On March 10, Mr. Miller, a Republican, introduced a resolution providing for the submission of the woman suffrage proposition to a vote of the women themselves. A substitute was offered to strike out the word "male" in Section 2 of Article 2. The amendment and the proposed substitute were both laid on the table and not subsequently considered.<sup>62</sup> At the session of 1877 a resolution was introduced in the Senate providing for woman suffrage but apparently it was given scant consideration.<sup>63</sup>

In 1881, immediately after the final ratification of the group of amendments first voted on in 1880, an amendment conferring the right of suffrage on women was actually adopted by both Houses and submitted to the General Assembly of 1883 for consideration and re-adoption. It was at the same session that the amendment prohibiting the manufacture and sale of intoxicating liquor was adopted and these two amendments were persistently identified in the public mind and scores of petitions were presented to the General Assembly of 1883 asking for the adoption of both amendments and their speedy submission to the people at a special election. The filibustering tactics used to defeat or postpone these amendments have been described in the section narrating the adventures of the liquor amendment.<sup>64</sup> The woman suffrage amendment was introduced in both houses; in the lower house, the amendment was re-adopted by a vote of 53-42, but the Senate declined to take any action on the measure.<sup>65</sup> The Senate resolution was withdrawn for technical reasons.

At the following session of 1885 woman suffrage amendments were introduced in both houses. Early in the session the House adopted a resolution providing for the appointment of a select Committee on Women's Claims to which were referred all matters pertaining to the proposed extension of the rights and privileges of women, and they also formally tendered the use of the House chamber to the Woman's State Suffrage Association of Indiana "for the purpose of addressing the members of the General Assembly on the suffrage question." Meantime, a resolution had been introduced in the House proposing a constitutional amendment conferring the right of suffrage on women, but it was

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61. House Journal, 145.

62. Ibid., 941.

63. Senate Journal, 50th Session, 95.

64. See p. clx.

65. House Journal, 53d Session, 702.



rejected by a vote of 45-43<sup>66</sup> and a similar amendment proposed in the Senate was rejected by a vote of 22-25.<sup>67</sup>

The question of woman suffrage was not subsequently considered for a period of a half dozen years. On February 19, 1891, on invitation of the Senate, Mrs. Helen Gougar addressed that body upon "the laws affecting the status of women in the State," including prohibition, municipal suffrage and other social and political reforms, making a strong appeal to the Senate to enact laws on these subjects. In response to this address, a resolution was introduced in the Senate, setting forth that since the Democratic party was the champion of "a free and universal ballot" and "in favor of the absolute prohibition of the liquor traffic," that the president of the Senate be authorized to appoint a committee of five Democrats to draft bills embracing statutory woman suffrage in all municipalities and absolute prohibition of the liquor traffic. This resolution was, apparently, not introduced in entire sobriety as an attempt was made to amend the resolution so as to ascribe all credit and devolve the duty of conferring full political rights on women on the Republican party. The resolution and the amendment thereto were immediately rejected.<sup>68</sup> Meantime the same day, February 19, was set apart by the House to listen to addresses "in behalf of municipal suffrage for women," and a resolution was introduced, proposing a constitutional amendment conferring the right of suffrage on women, which was indefinitely postponed.<sup>69</sup>

It will be observed that the right of suffrage demanded at this time by the women of the State pertained in the first instance to statutory offices only, a right which the General Assembly possessed without a constitutional amendment; the ultimate aim, of course, was to secure an amendment by which full political power could be obtained. In its response, the General Assembly attempted the harder task and ignored the one capable of attainment and hence achieved nothing. At the following session of 1893 no constitutional measures were considered but three bills were presented which were designed to confer on women the right to vote for all municipal officers and to hold any municipal office. None of these bills was ever reported from committee.

In 1895 an amendment was proposed conferring the right of

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66. House Journal, 54th Session, 311.

67. Senate Journal, 54th Session, 361.

68. Senate Journal, 57th Session, 602.

69. House Journal, 57th Session, 599.

suffrage on women, but the committee never reported it back.<sup>70</sup> In 1897, a bill was introduced in the Senate conferring on women the right to vote for members of the boards of school commissioners in cities but no definite action aside from formal introduction was ever had. Prior to the assembling of the session of 1899, the movement in favor of woman suffrage had been given a great impetus and when the General Assembly convened petitions were presented from twenty-five counties, signed by approximately 10,000 voters, asking that the Constitution be so amended as to confer the right of suffrage on women. Accordingly, resolutions embracing this amendment were introduced in both houses. In the House, the resolution was referred to the Committee on Revision of the Constitution who submitted a report recommending it to the favorable consideration of the succeeding General Assembly, inasmuch as amendments were pending and the consideration of other amendments was therefore invalid.<sup>71</sup> The House amendment was never reported from committee.<sup>72</sup> At the following session of 1901 the amendment was again introduced and finally passed the House by a vote of 52-32 but was never reported from committee in the Senate.<sup>73</sup>

No further consideration was given to the question until 1907. During the session of that year, bills were introduced in both houses prescribing the qualifications of women to hold office, conferring on women the right to vote at all municipal elections, protecting women citizens of the State in the exercise of the suffrage and extending to women the right to vote for presidential electors. Only one of these bills, the one conferring on women the right to vote at municipal elections, came to a vote in either house, and it was defeated in the Senate by a vote of 24-22.<sup>74</sup> On February 5, a joint session of the two houses was held to listen to an address by Helen M. Gougar on questions relating to woman suffrage and on February 16 a petition was presented in the House requesting the General Assembly "to submit to the electors of the State an amendment to the Constitution striking out the word 'male' as a qualification for suffrage."

The most important measure considered at the session of 1911 was the so-called Marshall constitution providing for a general revision of the Constitution but containing no provision relative

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70. House Journal, 59th Session, 865.

71. Senate Journal, 61st Session, 99, 290.

72. House Journal, 61st Session, 160.

73. Senate Journal, 62nd Session, 1195.

74. See Senate bills Nos. 91 and 285, and House bills Nos. 43, 575, 487 and 500.

to woman suffrage. One bill on this subject was considered and was designed to confer the right of suffrage on women in all city and town elections. Identical measures were introduced in both houses. The Senate bill was favorably reported but not subsequently considered and the House bill was lost by a vote of 41-48.<sup>75</sup>

At the session of 1913, a group of constitutional amendments, embracing substantially the provisions of the Marshall constitution, was adopted and submitted to the General Assembly of 1915. In these amendments, however, no provision was made for woman suffrage. The subject arose in another form by the introduction of two Senate bills proposing to fix the political status of women by providing that women above the age of twenty-one years and possessing residential qualifications should be eligible to the offices of school trustee and school commissioner in cities and towns and providing for the election of women as school trustees in cities where school trustees are elected by the common council. One of these bills was withdrawn by the author; the other bill passed the Senate by a vote of 27-10 but the House took no action.<sup>76</sup> Late in the session a joint resolution was introduced in the Senate proposing an amendment to the Constitution extending the right of suffrage to women, but it was never reported back from committee.<sup>77</sup>

**The Wabash and Erie Canal Amendment.**—The first amendment to the present Constitution became effective on March 10, 1873, twenty-two years after the Constitution was adopted. This amendment prohibited the General Assembly from ever passing any law or joint resolution acknowledging or assuming any indebtedness incurred in the construction of the Wabash and Erie Canal. The history of the construction of the canal and the creation, vicissitudes and extinction of the debt incurred thereby covers a period of nearly half a century.

By an act of Congress approved March 2, 1827, a strip of land one-half of five sections in width, on either side of the proposed artificial waterway, was granted to the State for the purpose of aiding in the construction of a canal uniting at navigable points the waters of the Maumee and Wabash rivers. The gift was accepted by the State on January 5, 1828. Filibustering delayed

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75. See Senate bill No. 190 and House bill No. 244.

76. See Senate bills Nos. 69 and 206.

77. Senate Journal, 68th Session, 1542.



the commencement of the work for more than a year. When surveys were finally made, it was discovered that the navigable points of the two rivers could not be united without building part of the canal in the State of Ohio. Finally, after much negotiation, a compact was entered into between the two States by the terms of which Ohio was to take part of the land grant and dig that part of the Canal within her boundary. By an act of January 9, 1832, a commission was created to prosecute the work and they were authorized to borrow money and sell bonds to finance the enterprise. The first contracts for construction were awarded on March 1, 1832, and the line from Toledo to Lafayette was formally opened on July 4, 1843. The Canal was a losing venture from the start and did not yield sufficient revenue to pay the interest on the bonds, and the price of the bonds finally fell to seventeen cents in New York. The credit of the State was seriously imperiled and public men were greatly perturbed. Governor Whitcomb, in 1844 and 1845; the House Committee of Ways and Means, in 1846; and Edward A. Hannegan, United States senator, all insisted that the State was willing and anxious to meet its just obligations. On January 13, 1845, the General Assembly adopted a joint resolution denouncing repudiation and ordered that the resolution be transmitted to each of the States. But at the same session the Governor expressed the conviction that it was "beyond the power of our State, at present to fully meet our obligations." At this juncture the bondholders confederated together and employed Charles Butler, a New York attorney, to look after their claims. Butler knew that the demand for an immediate and unconditional payment was useless. His plan was to divide the interest on the State debt into two parts one of which should be paid by the State and the other from the revenues of the Canal. Butler explained his plan to the people of the State in a series of addresses beginning in May, 1845. On December 19, 1845, he laid these plans before a joint committee of the General Assembly and the Governor urged their adoption. The committee, however, refused to accede to the demands of the bondholders and on December 26 Butler presented his second plan to the committee. These proposals were finally adopted and were incorporated in the act of January 19, 1846. The act of 1846 was soon found to be incapable of execution and a second act was passed at the following session and approved on January 27, 1847. The general effect of these two laws was to transfer the Canal to the bondholders and to divide the Canal debt into two

equal parts, one of which, with its accumulated interest, was assumed by the State and the other part was made a debt on the Canal for which the State assumed no further responsibility. By the terms of this compromise, which the bondholders were forced to accept, the creditors of the State lost half their invested money and the problem continued to confront the General Assembly until it was finally solved by the amendment of 1873.<sup>78</sup>

During the ten years prior to the Civil War strong pressure was brought to bear on the General Assembly to buy back or reassume the obligations and liabilities of the Canal. During the year 1857 a rumor was circulated that an attempt was to be made to induce the General Assembly to purchase the Wabash and Erie Canal. To discourage this movement, a joint resolution was adopted and approved by the Governor on February 19, 1857, declaring that the General Assembly had no power under the Constitution to purchase the Canal and that if it had such power it would be impolitic, unwise and injurious to the best interests of the State to do so.<sup>79</sup> A few days before the adjournment of the 39th General Assembly, in March, 1857, the stockholders of the Canal transmitted a memorial through the Governor to the General Assembly in which they attempted to show that "the State by her own acts had rendered herself liable for the payment of said stocks."<sup>80</sup> On November 22, 1858, immediately upon the assembling of the special session, a resolution was introduced in the House declaring the unalterable opposition of the House to the purchase of the Canal. By a vote of 99-0, the resolution was amended to read that "it would be unwise and inexpedient to take back, upon any terms, the Wabash and Erie Canal, or to reassume in any form the debt to satisfy which, it was transferred to the bondholders."<sup>81</sup> Meantime a report was circulated that the Canal trustees had announced their intention of abandoning the Canal. Since it was uncertain to what extent the State was involved or might become involved, on account of the con-

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78. For the early history of the Canal, Dr. Logan Esary's study on Internal Improvements in Early Indiana has been used.

79. Laws, 1857, p. 130. The resolution as adopted is as follows:

*Be it resolved by the General Assembly of the State of Indiana, That the General Assembly of the State of Indiana has no power under the Constitution to purchase the Wabash and Erie Canal.*

*And be it further resolved by the said General Assembly, That if the General Assembly had the power it would be impolitic, unwise, and injurious to the best interests of the people of the State to purchase said canal.*

80. Message of Governor Baker of January 6, 1871. Senate Journal, 47th Session, 43.

81. House Journal, Special Session, 1858, 21 and 23.

templated abandonment, to individuals or the State of Ohio, the General Assembly was seriously perturbed and on February 9, 1859, the Senate adopted a resolution providing for the appointment of a select committee of five to investigate the whole matter and report.<sup>82</sup> On February 18, before the committee had had time to report, the Senate adopted a second resolution declaring it "dangerous and improper" to pass a law relinquishing any right the State might have in the Canal, or to interfere in any way by legislative action, since the bondholders had not given any intimation of their intention to abandon the Canal or violate the contract.<sup>83</sup> The Democratic State Convention of January 11, 1860, and the Republican State Convention of February 22, 1860, both adopted resolutions opposing the transfer of the Canal to the State or the assumption of any of its liabilities,<sup>84</sup> and with this action all discussion of the Canal problem was discontinued until after the close of the war.

The constitutional amendment designed to effect a final settlement of the perplexing Wabash and Erie Canal question was first presented in the Senate at the 45th session of 1867. As originally proposed, the amendment prohibited the General Assembly from ever incurring any debt, liability or claim of the Canal except as provided in the acts of 1846 and 1847. On consideration, the Senate amended the proposed amendment to provide that it should not affect "the rights of persons holding the obligations of the State, and who were not parties to the adjustment of the debt" of the State as made in the two acts referred to. In this form the amendment was adopted by the Senate by a vote of 26-15 but was lost in the House by a vote of 47-21, wanting a constitutional majority.<sup>85</sup> At the following session, on January 8, 1869, Governor Baker informed the General Assembly in his biennial message, that the aggregate canal debt which the State might conceivably assume was upwards of \$15,000,000 and he urged the adoption of the amendment which had failed of passage two years before. Accordingly, a resolution, embodying an amendment in precisely the words in which it finally passed, was introduced in the Senate but never emerged from the committee to which it was submitted for consideration,<sup>86</sup> and a companion

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82. Senate Journal, 40th Session, 438.

83. *Ibid.*, 608.

84. Indianapolis Sentinel, January 13, 1860, and Indianapolis Journal, February 23, 1860.

85. Senate Journal, 45th Session, 45, 753, 754, 835 and 838.

86. Senate Journal, 46th Session, 46 and 335.



resolution, declaring it to be both unconstitutional and impolitic to purchase the Canal, was never advanced to maturity.<sup>87</sup>

In his message to the General Assembly on January 6, 1871, Governor Baker devoted fully one-third of his message to a discussion of the Canal question. He informed the General Assembly that a renewed attempt was to be made by the stockholders to induce the State to assume the obligations of the Canal. For that purpose a new edition of the pamphlet which had been issued in 1857 had been brought out and a copy had been sent to every member of the General Assembly. The press of New York and London had been used to give currency to the imputation that Indiana, in refusing to charge the Canal stock upon her treasury, was guilty of repudiation. It, therefore, seemed proper "that the public should be informed, through some official channel of the views entertained by our people, together with the grounds upon which they are based." The Governor then recommended the adoption of the Canal amendment and proposed that, pending the ratification of the amendment, no Canal debt should be recognized or assumed by the General Assembly until the proposed plan had been submitted to and ratified by the people.<sup>88</sup> No difficulty was encountered in securing the adoption of this measure. The resolution was introduced in the Senate on January 6 and passed on January 18 by a vote of 45-1; the resolution passed the House on January 24 by a vote of 93-0, seven members being absent.<sup>89</sup> By the adoption of this resolution, one of the Governor's recommendations had been carried out. The second recommendation was embodied in a concurrent resolution declaring that it would be inexpedient to take any legislative action on the question of the State's resuming the Canal except for the purpose of submitting the matter in some appropriate form to the people and for the protection of the Canal from sale and its revenues from sequestration, and that the State would make provision for the payment of the principal and interest of the old bonds of the State issued prior to 1841 not surrendered under the act of 1846 and 1847. This resolution was adopted by the Senate but rejected by the House.<sup>90</sup>

The special session of 1872 was a different body from that which

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87. Senate Journal, 519.

88. Ibid., 47th Session, 43 and 47.

89. Laws, 47th Session, 67. Substantially similar resolutions were introduced in the House on January 5 and January 16, but were superseded by the Senate measure House Journal, 47th Session, 14 and 160.

90. House Journal, 47th Session, 270

assembled in 1871 and was, therefore, competent to act on the Canal amendment. Prior to the convention of the special session some doubt existed as to whether the amendment had been legally adopted by the preceding regular assembly, because of the failure to spread the amendment at large on the journals. In his message to the General Assembly, Governor Baker called attention to this fact and after pointing out that the yeas and nays had been entered in the journals of both houses, that the enrolled resolution, signed by the presiding officers of both houses, had been deposited with the Secretary of State, and that the resolution had been published with the laws of the last session, he expressed the conviction "that the omission to spread the amendments at large on the journals does not vitiate it. The provision which says that the amendment shall be entered on the journals, if indeed it means that it shall be copied at full length, is, at the most, only directory and not mandatory, and, consequently, the amendment, if passed by the present General Assembly and ratified by the people will be valid as a part of the Constitution." As the views which he had expressed in his last regular message on the subject of the Canal debt and the necessity and propriety of an amendment to the Constitution remained unchanged, he urged the adoption of the pending amendment and its speedy submission to the people for ratification. The resolution embodying the Canal amendment passed the House on November 14 by a vote of 97-0 and the Senate on December 3 by a vote of 34-0. The bill for the submission of the amendment to the people was adopted by the Senate on December 14 by a vote of 37-1, and was referred to the House but was not acted upon during the special session. In his message of January 10, 1873, Governor Baker urged the maturity of this measure and on February 18 the bill passed the House by a vote of 86-0, and was approved by the Governor on January 28.<sup>91</sup> This act provided that the Canal amendment should be submitted to the people for ratification at a special election to be held on February 18, 1873.<sup>92</sup> On January 31, 1873, the Governor, in conformity with a joint resolution adopted on the same date, issued his official notice informing the electors of the approaching election.<sup>93</sup> The vote in favor of the amendment

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91. A similar bill was introduced in the House on November 13 but was superseded by the Senate bill. House Journal, 1872, 16.

92. Senate Journal, 1872, 17; House Journal, 1872, 52; *Ibid.*, 48th Session, 25; Laws, 1872, 137; *Ibid.*, 48th Session, 83.

93. Laws, 48th Session, 240; Indianapolis Journal, February 1, 1873.

was overwhelming. Out of a total vote of 159,430, 158,400 votes were cast in favor of the amendment and 1,030 votes were cast in opposition. The mandate of the people being unmistakable, Governor Hendricks, who had been inaugurated Governor on January 11, 1873, issued his official proclamation on March 10, 1873, declaring the Canal amendment in force.<sup>94</sup>

The validity of the proceedings in the adoption and ratification of this amendment was never contested, but in an obiter dicta statement in the case of *State v. Swift*, 69 Ind. 505, decided in May, 1880, the Supreme Court held that the Wabash and Erie Canal amendment was regularly adopted, had become *res adjudicata* and was a vital and fully operating part of the Constitution.

**Negro Colonization and Municipal Debt Limit.**—Although the agitation over the slavery question had been somewhat allayed in 1850 by the passage of the famous compromise measure of that year, it was manifest to all observers that the controversy was sure to emerge at any time in an aggravated form. Differences of opinion on this question displayed themselves in the convention which framed the Constitution of 1850. No important opposition was encountered in restricting suffrage to white male citizens and in expressly denying it to negroes. But the question of civil rights was the subject of a prolonged controversy, and after a large number of suggestions had been proposed, the whole question was submitted to a large representative, select committee for adjustment. This committee, after weeks of consideration, proposed the 13th Article of the Constitution which imposed certain civil disabilities on the colored race relative to education, immigration into the State, the negotiation and consummation of contracts, ownership of property, and the right to testify in courts of justice. In addition, fines were to be imposed on white citizens who were found guilty of violating any of the express and implied provisions of the article, and the fines so imposed and collected were to constitute a fund to be used to assist in the colonization of negroes in Liberia and elsewhere, a movement which had been given conspicuous impetus by the work of the various colonization societies. The article as reported was a compromise and as such was submitted to the people as a separate and distinct proposition and was ratified by a large majority. On June 18, 1852, an act was approved which was designed to carry this article into effect.

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94. Indianapolis Journal, March 10, 1873.



There was no immediate likelihood that this article would be disturbed so long as the institution of slavery was not subjected to more successful attacks than it had yet sustained. However, in 1855, a year after the passage of the Kansas-Nebraska act had thrown the country into violent perturbation, and when an attempt was being made by the Republicans to secure extensive changes in the Constitution, a motion was twice proposed in the House to strike out the 13th Article; on first introduction it was attached as a rider to another wholly unrelated proposition and both were lost by a vote of 61 to 19; on second introduction, it was submitted on its own merits and was lost by a vote of 43 to 35.<sup>95</sup>

The article was not subsequently molested until 1865 when the War was rapidly drawing to a close and after the institution of slavery had been disestablished by the Emancipation Proclamation. At the session of that year, a petition, adopted by the Western Yearly Meeting of Friends of Southern and Western Indiana and Eastern Illinois, held at Plainfield on September 19 to 22, 1864, was presented in both Houses demanding the extension of suffrage to negroes, the right to testify in courts of justice and equal opportunities for education.<sup>96</sup> In the House, the petition was referred to the Committee on Rights and Privileges who presented a divided report on March 3. The majority report recommended indefinite postponement. The minority report recommended that the 13th Article of the Constitution be stricken out; that all laws depriving negroes of the right to testify in courts of justice be repealed; that the act of June 18, 1852, designed to enforce the 13th Article, be repealed; and that the common school act of March 11, 1851, should be so amended as to give colored children their proportionate share of the common school revenue. Both reports were laid on the table and not subsequently considered.<sup>97</sup> Meantime, on January 7, a resolution was introduced in the House to amend the Constitution by striking out the 13th Article. The resolution was referred to a select constitutional committee for consideration and a divided report was presented; the majority report recommended passage; the minority report recommended indefinite postponement.<sup>98</sup> The session adjourned before the reports could be considered and at the special session of the same year the measure was taken up for con-

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95. House Journal, 38th Session, 781.

96. Senate Journal, 44th Session, 92.

97. House Journal, 44th Session, 758.

98. *Ibid.*, 44.

sideration and passed the House by the narrow vote of 51-41 and was referred to the Senate. On December 8, the Senate refused by a vote of 21-22, to advance the resolution to engrossment and it was given no further consideration.

In the meantime the Federal Constitution had been amended to confer on negroes and mulattoes full political and civil rights, and at the May term of 1866 the Supreme Court, in the case of *Smith v. Moody*,<sup>99</sup> held that the 13th Article was null and void as being repugnant to an express provision of the Constitution of the United States. Accordingly, in his message of January 11, 1867, Governor Morton referred to this decision and recommended that "as an act of public decency" the 13th Article be formally repealed. It was impossible to secure such action at this session, but the article was rendered doubly useless by the formal repeal of the act of June 18, 1852, by an emergency act approved February 22, 1867.

The 13th Article still remained, present but inoperative, as a part of the Constitution, without an attempt to remove it, until 1873. By that time the State was greatly disturbed by the rising tax rates in the various municipalities of the commonwealth and a movement had been inaugurated to enforce economy in public expenditures by imposing a constitutional debt limit on cities and towns. Besides, the bitterness aroused by the War had sufficiently subsided to procure more deliberative action on some of the questions which had been definitely settled by the triumph of the North and hence the opposing factions were willing to lay aside the idle obstructions which they had formerly opposed and coöperate in deleting the negro disability provision. In this way the two propositions, although wholly unrelated, were considered concurrently. Hence a resolution, proposing to amend the Constitution by striking out the negro exclusion and colonization clause and inserting in lieu thereof the municipal debt limit provision, was passed by the House by a vote of 60-13 and by the Senate by a vote of 34-4.<sup>1</sup> In 1875, this amendment, then pending, was indefinitely postponed by the House and merely placed upon the calendar in the Senate.<sup>2</sup> In 1877, the amendment was introduced *de novo*; an unsuccessful attempt was made in the senate to fix the municipal debt limit at 3%, but the amend-

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99. 26 Ind. 299.

1. Senate Journal, 48th Session, 1031.

2. House Journal, 49th Session, 160.

ment was adopted in its original form by a vote of 38-6.<sup>3</sup> The resolution was not considered by the House until the special session. According to the records, it was rejected on March 13 by a vote of 35-40; no further action was had on the measure, but it was subsequently announced that the amendment had passed.<sup>4</sup> The amendment was readopted in 1879<sup>5</sup> and submitted to the electors in 1880. The decision in *State v. Swift* made necessary the resubmission of this and the other amendments in the 1880 group and it finally became a part of the Constitution in 1881.

So far as the writer is aware, the passage of the municipal debt limit amendment was not inspired by a determination on the part of the public utility interests to prevent and suppress the growing demand for municipal ownership. The question, in fact, was barely discussed in debate on the floor of either house. The adoption of the amendment was clearly a foregone conclusion, promoted by an unmistakable popular demand. However, a very interesting commentary on the probable effects of the municipal debt limit provision was supplied by a resolution which was introduced in the Senate on January 20, 1879, when its adoption had become an assured fact. This resolution set out that important public works had been commenced by towns and cities for the purpose of supplying water and other public necessities, and that the suspension of these enterprises, for want of funds or ability to issue bonds, would result in irreparable loss or injury. The resolution therefore proposed that the municipal debt limit amendment should not be voted on prior to the general election of 1880. The resolution was laid on the table. As this amendment did not become operative until 1881, these municipalities were doubtless afforded the opportunity of fortifying themselves against the anticipated and impending disaster.

**Frequency of Sessions.**—A subject intimately associated with the question of the duration of legislative sessions was the matter of the frequency of sessions. Under the Constitution of 1816, sessions were held annually, but the demand for biennial sessions in 1850 was practically universal, and although a rather superficial agitation for a reversion to annual sessions was kept up for a period of 15 years, beginning in 1855 and terminating in 1867, there was obviously no very far-reaching demand for the change.

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3. Senate Journal, 50th Session, 217.

4. *Ibid.*, p. 620.

5. Laws, 51st Session, p. 54.



Among the constitutional changes proposed by the Kilgore bill of January 9, 1855, an amendment was included providing for annual, unlimited sessions; but, on consideration, the measure was rejected by a vote of 38-44.<sup>6</sup> In 1857 a bill was introduced in the House to provide for annual sessions of the General Assembly and to change the terms of senators and representatives accordingly. The bill was reported favorably by the Judiciary Committee to whom it had been referred for consideration and the report was concurred in by the House. Several days later the bill was referred to a select committee with instructions to effect certain designated changes in the phraseology. In advocating the adoption of this amendment, it was asserted that the system of biennial sessions had not resulted in economy or dispatch of business; the public business should be inspected annually; after an experience of six years, the question had become too plain to admit of argument; the members of the constitutional convention had assembled with preconceived ideas in favor of biennial sessions because of its supposed economy; Clarke of Tippecanoe and Biddle of Cass were the only two delegates who saw the folly of this reasoning; the question was not thoroughly discussed, and only five men voted against it. Moreover, biennial elections removed the representative too far from the people and they were above the control of their masters for too long a time. The power of the people is represented in annual elections, for tyranny begins where frequent elections cease, and when a representative is removed two or four years from the people "he ceases to be a true exponent of their immediate opinions." It was also urged that the terms of senators should not extend beyond three years, and that they should be so classified that one-third of them would be elected annually. The amendments proposed by the committee, following the argument, were concurred in. After several amendments had been proposed, similar to those already described, the measure was indefinitely postponed.<sup>7</sup>

In 1858, while the special session of that year was in session, the Indianapolis Journal, in its issue of December 18, advocated a change in the Constitution to provide annual sessions. Biennial sessions deprived the people of "the annual opportunity of amending their laws and enacting such as are new and needful." This fact was "manifestly exhibited" by the called session then sitting.

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6. House Journal, 38th Session, 783.

7. House Journal, 1857, 250, 272, 542, 561, 653, 741, 775 and 797; Indianapolis Journal, January 28 and February 25, 1857; Sentinel, February 25, 1857.

Biennial sessions were “a step backward” and could only be accounted for “by the timid and penny-wise spirit which actuates demagogues in their hunt for public favor.” In 1861, as the War was approaching, and as the volume of public business naturally increased, the demand for annual sessions became rather pronounced. The House Judiciary Committee, which had been instructed to inquire into the expediency of so amending the Constitution as to provide biennial sessions, reported a resolution embodying the proposed change and recommended its adoption. In urging the adoption of this measure, the committee called attention to the fact that 61 days was too short a time to enable the General Assembly “properly to mature the legislation necessary for a million and a half of people”; the expense involved was the chief argument employed in adopting the provision limiting sessions, but “the people have lost far more for the want of such sessions to watch unfaithful public servants” and experience had proved that the General Assembly should meet more frequently.<sup>8</sup> In spite of the argument advanced by the committee, the measure was not adopted and no further attempt was made to provide for annual sessions until 1865 when the accumulated volume of public business rendered the calling of a special session imperative. At that session a constitutional amendment was proposed in each house. The measure introduced in the lower House was lost by a vote of 39-48, and the Senate resolution was never reported from committee.<sup>9</sup> The last attempt to secure a constitutional amendment to provide annual sessions was in 1867. The select constitutional committee of the Senate, being under instructions to report a group of general amendments to the Constitution, reported one in favor of annual sessions, beginning on the first Thursday in December. On March 7, it was adopted in this form along with the entire group of amendments proposed and referred to the House, but as no action was taken on the amendment in its amended form, it was lost.<sup>10</sup>

**Duration of Legislative Sessions.**—Under the Constitution of 1816, the General Assembly met annually and the sessions were unlimited in their duration. The chief argument advanced for biennial sessions, constitutionally limited, was the economy of public money which could be effected. Naturally

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8. House Journal, 41st Session, 55, 771.

9. House Journal, Called Session, 1865, 94; Senate Journal, 336.

10. Senate Journal, 45th Session, 753, 835 and 838.

the change from annual unlimited sessions to biennial, limited sessions was abrupt and clearly noticeable in the discharge of public business. Moreover, as the war came on and as the subjects of legislation became more numerous, intricate and diversified, the brevity of the session became increasingly more manifest. The Constitution provides that the General Assembly shall continue in session for 61 days, with the exception of the first session which was unlimited in its duration. At the second session of 1853, very little legislation was enacted and the session closed before the expiration of the 61 days. However, a question had already arisen which continued to perplex the General Assembly for a quarter of a century, which has never been judicially construed, except by an *ex parte* opinion, but which, by uniform legislative practice and general popular acceptance, may now be considered definitely settled. That question concerned the precise meaning of the term "sixty-one days" as used in the Constitution. Two equally valid interpretations are possible. The expression means either 61 working days, excluding Sundays and holidays, or 61 consecutive days, including Sundays and holidays. In order to obtain an authoritative expression of opinion on this controverted point, the House adopted a resolution on January 27, 1853, instructing the Judiciary Committee to investigate and construe this provision. On February 7, before the committee had submitted its report, the House anticipated its conclusions by adopting a resolution declaring that the meaning of the constitutional provision was "sixty-one consecutive days." On the following day, February 8, the committee submitted an elaborate report, agreeing in its conclusions with the action of the House already taken that a session of the General Assembly is sixty-one consecutive days, including Sundays and holidays.<sup>11</sup> This conclusion may safely be assumed as the precedent repeatedly appealed to and cited, and, in spite of numerous attempts to over-rule it, it still stands as the rule of procedure which has been followed without an exception. On March 1, 1859, and on March 8, 1861, the House Judiciary Committee sustained this precedent by reporting that a session of the General Assembly consisted of 61 consecutive days,<sup>12</sup> and although the Senate adopted a resolution on March 2, 1859, declaring that Sundays should not be included in computing the 61 days, its declaration was rejected.<sup>13</sup>

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11. House Journal, 37th Session, 449.

12. House Journal, 40th Session, 908, and 41st Session, 961.

13. Senate Journal, 40th Session, 881.



During the War the volume of public business to be transacted was exceptionally heavy. As a result, much important legislation was neglected or rushed through hurriedly, or special sessions were called to mature important measures. An interesting case of this kind arose in 1865, when, as the end of the session approached, it became manifest that important bills would be lost for lack of adequate time to consider them properly. Governor Morton, confronted by this dilemma, concluded that, if, "by proper construction," the term "sixty-one days" could be interpreted to mean 61 "working days," the session might be "extended for a few days," which would be of "great importance to the public interest." Accordingly, he asked four judges of the Supreme Court, Charles H. Ray, J. T. Elliott, James S. Frazier and R. C. Gregory, for an *ex parte* construction of this provision. On March 3, these four judges informed the Governor that, in their judgment the better opinion was that "business days only are embraced;" that "various considerations tend so strongly to support this view, that if a contrary practice had not heretofore prevailed, we would hardly entertain a doubt upon the subject;" that if the present General Assembly should act upon this opinion, "it would go far to annul the influence of the former practice of that body as a precedent;" and that "the courts would not, it is well settled, be justified in holding void the action of a co-ordinate department." The Governor had also consulted the Speaker of the House and the President of the Senate, both able lawyers, and they concurred in the opinion of the supreme judges. Having obtained these opinions, and being convinced himself of the soundness of the logic, the Governor sent a special message to the General Assembly on March 3, alleging "the importance of the subject" and "the present condition of the business of the Legislature" as adequate justification for doing so. The suggestion of the Governor was unfavorably received in both houses. In the Senate, the Governor's message was taken up for consideration by a vote of 33-14, and referred to the Judiciary Committee by a vote of 41-5. On March 6, the committee returned a divided report, but both reports agreed on the central proposition that a session was only 61 days in duration, including Sundays.<sup>14</sup> In the House, the message was referred to a select committee, who returned a divided report. The majority of the committee reported that "it would be inexpedient to unsettle the now established rule of construing the

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14. Senate Journal, 44th Session, 538, 583 and 584.

session to be sixty-one consecutive days, including Sundays.” Mr. Newcomb presented a separate report, agreeing with the major premise of the majority report “because he deemed it doubtful whether a quorum could be kept in attendance for a longer period at the present session, and because he had been informed that the Judiciary committee of the Senate had reported against a continuance of the session.” On the legal question he agreed with the Governor and judges.<sup>15</sup>

The decisive action of the General Assembly in 1865, declining to disturb the precedent which had been observed for a dozen years, remained unchallenged until 1877, when on March 5, a resolution was introduced in the House, and promptly laid on the table, declaring that a session of the General Assembly should consist of 61 working days.<sup>16</sup> In 1879, unsuccessful attempts were made in both Houses to secure the adoption of resolutions requiring the attorney-general to construe this provision of the Constitution to mean 61 working days.<sup>17</sup> With this attempt, no further effort was made to extend a regular session by construction and the matter is now accepted without question.

Concurrently with the foregoing controversy, a movement was going forward to secure an amendment to the Constitution to extend the term of a session to a longer period than 61 days. In 1885, when the first comprehensive attempt was made to amend the Constitution, a proposal was included to entirely remove the limitation on legislative sessions. As has been shown elsewhere, this attempt ended in failure and produced no little dissatisfaction throughout the State. In its issue of March 8, 1855, the Indianapolis Journal discussed the situation with expressions of regret. “No measure was matured,” they said, “for want of time to change the Constitution. Its restrictions go too far . . . That upon the limit of the sessions of the Legislature is working badly . . . The limitation upon the session is ridiculous . . . and under its operation . . . the most important matters could not be sufficiently matured, and others have been lost for want of time to consider them.” No further effort was made, however, to procure longer sessions until 1867 when a select House Committee which had been appointed to report more general amendments to the Constitution reported an amendment providing for unlimited sessions, with the reserva-

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15. House Journal, 44th Session, 856 and 875.

16. House Journal, 50th Session, 989.

17. Senate Journal, 51st Session, 15.

tion that members were to receive no compensation for their services after the first 90 days of a regular session and the first 40 days of a special session. The amendment was adopted by the House and referred to the Senate. The Senate amended the resolution to provide for unlimited sessions, with the restriction that the pay of members was to cease after the first 61 days of a regular session and the first 40 days of a special session and in this form it was adopted by a vote of 26-15. The House, however, never acted upon the resolution as amended by the Senate.<sup>18</sup>

In his message to the General Assembly on November 14, 1872, Governor Baker condemned the constitutional limitation on legislative sessions as pernicious. The growth of the State in wealth and population and the increase and diversity of subjects requiring legislative attention rendered it impracticable for the General Assembly to transact all the business demanding its attention in 61 days, even when no extraordinary events occurred to impede and prevent legislative action.

In 1873 one of the amendments reported by the select constitutional committee of the Senate provided that the duration of a regular legislative session should be 100 days. This amendment was agreed to by the Senate but rejected by the House by a vote of 49-23.<sup>19</sup> In 1877, an amendment was adopted by the Senate, by a vote of 33-11, and by the House, by a vote of 55-19, fixing a regular session at 121 days and a special session at 60 days.<sup>20</sup> In 1879, this amendment, then pending consideration, was readopted by the Senate by a vote of 44-5, but rejected by the House by a vote of 23-70.<sup>21</sup> In his inaugural address, delivered on January 12, 1885, Governor Gray approved the 61 day limit imposed on legislative sessions; the world was governed too much; too many laws were enacted; and this principle had doubtless actuated the framers of the Constitution "in restricting the length of our legislative sessions." The fact that this provision had been "so long sanctioned by the people without an effort to change it, argues well its wisdom as a measure tending to serve the best interests of all the people of the State." The Governor thereupon half conceded the untenability of the position which he had assumed by urging each legislator to "diligently and earnestly coöperate with his fellow-members in perfecting and advancing the most important meas-

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18. Senate Journal, 45th Session, 753 and 835.

19. Senate Journal, 48th Session, 1031.

20. Senate Journal, 50th Session, 621.

21. House Journal, 51st Session, 287.



ures. . . .” The foregoing discussion adequately disproves the assertion that no effort had been made to change this provision.<sup>22</sup> In spite of the Governor’s admonition, the House adopted a resolution on February 19, fixing a regular session at 100 days and special sessions at 50 days, but the Senate became involved in the question of fixing the compensation of members of the General Assembly and the whole proposition was finally postponed.<sup>23</sup> In 1889, the General Assembly actually adopted an amendment providing that all regular and special sessions should continue “until the legislative and all other business required to be effected thereby shall have been completed, or so long as by the members thereof may be deemed advisable.” The demand for longer sessions was undoubtedly pronounced as the resolution passed the House by a vote of 78-2 and the Senate by a vote of 44-1.<sup>24</sup> At the beginning of the succeeding session of the General Assembly in 1891, a senate committee reported that grave doubt existed as to whether the pending amendments, including the amendment providing unlimited sessions of the General Assembly, had been properly adopted. The amendments were therefore rejected and the process of adoption begun de novo. The amendment relative to the duration of legislative sessions was altered somewhat and provided merely that regular sessions should not exceed 100 days in duration, leaving the rest of the provision unchanged. As thus drafted the resolution passed the House by a vote of 75-0 and the Senate by a vote of 41-1.<sup>25</sup> At the succeeding session of 1893 this resolution was adopted by the House by a vote of 53-40 and by the Senate by a vote of 38-7. The Senate, however, experienced an abrupt change of sentiment and later on the same day on which the resolution was adopted by an almost unanimous vote, the measure was reconsidered and rejected by a vote of 20-19.<sup>26</sup>

The subject was not considered again until 1899 when a resolution was introduced in the Senate fixing the duration of a regular session at 120 days and prohibiting the General Assembly from considering any business at a special session except such as was included in the Governor’s call. The measure was indefinitely postponed without serious consideration.<sup>27</sup> On March 11, the last day of the session of 1907, an amendment extending the term

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22. House Journal, 54th Session, 62.

23. House Journal, 54th Session, 797.

24. House Journal, 56th Session, 932.

25. Senate Journal, 57th Session, 1253.

26. Senate Journal, 58th Session, 521.

27. Senate Journal, 61st Session, 183.

of a legislative session to 100 days was prepared by two Republican and two Democratic senators and introduced in the upper house and passed under suspension of the rules by a vote of 34-0. The lateness of the day prevented the House from taking any definite action on the amendment.<sup>28</sup> One of the amendments proposed by the so-called Marshall Constitution of 1911 fixed the duration of a regular session at 100 days, reduced the term of a special session to 30 days and forbade the General Assembly from considering any business at a special session which was not specifically set forth in the Governor's call.<sup>29</sup> As the procedure in adopting this Constitution was declared invalid by the highest court, no further action was taken on this amendment. At the ensuing session of 1913, after the rejection of the proposed new constitution by the Supreme Court, Senator Stotsenburg introduced a series of amendments embracing the more important changes included in the Marshall constitution. When these amendments were under consideration in the House, an additional amendment was proposed and adopted by unanimous consent providing that the General Assembly at any regular session should remain in session for 30 days, unless sooner adjourned, for the purpose of introducing bills; a recess of not less than 60 days was then prescribed during which time the proposed bills should be considered by the members of the General Assembly and their constituents; on a day fixed by the previous session the General Assembly was to reconvene for the purpose of approving, voting on and enacting the proposed bills into laws. The duration of both halves of the session, inclusive, was fixed at 61 days.<sup>30</sup> This provision substantially fulfilled the recommendation made by Governor Marshall in his biennial message to the General Assembly on January 5, 1911, in which he advanced the opinion that "it would conduce to good legislation if the Constitution were amended so as to provide for a legislative session in December for the introduction and amendment of bills and for a second session, following an adjournment until the first Monday in May, for the placing of bills upon their final passage."<sup>31</sup> When the Stotsenburg amendments were sent to the conference committee to adjust the differences between the two Houses, the amendment providing for

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28. Senate Journal, 65th Session, 2466.

29. Laws, 1911, p. 205.

30. House Journal, 68th Session, 2071.

31. House Journal, 67th Session, 19.

bisected sessions was eliminated<sup>32</sup> and the subject of the character or duration of legislative sessions has not since been considered.

**Number, Compensation and Apportionment of Senators and Representatives.**—No provision of the Constitution was the subject of a more prolonged or animated discussion than the section fixing the number of the members of the Senate and House of Representatives. As reported from committee, the membership of the House was fixed at not less than 60 nor more than 75 and the Senate at not less than one-third nor more than one-half of the membership of the House. During the discussion on the floor of the Convention, which extended over a period of several days, several radically divergent proposals were made,<sup>33</sup> and the provision which was finally adopted was a compromise, fixing the maximum number of senators at 50 and the House at 100. This was practically the number then allowed by law under the apportionment act of 1851,<sup>34</sup> and the number which was fixed by the next succeeding apportionment act of 1857.<sup>35</sup> The compensation of members was not fixed by the Constitution but was left to the discretion of the General Assembly. By an act approved June 4, 1852, the per diem of senators and representatives was fixed at \$3 and mileage at the rate of \$3 for each 25 miles necessarily traveled in going to and returning from the seat of Government.<sup>36</sup>

On January 23, 1855, a resolution was introduced in the House declaring it to be the sense of that body that the number of senators and representatives could be reduced without detriment to the public service and instructing the Committee on Apportionment to fix the number of senators at 30 and the number of representatives at 70, and to increase the compensation of members to \$4 per day. When the resolution was under consideration, an unsuccessful attempt was made to fix the number of senators at 24 and the number of representatives at 100. The recommendation that the compensation of members of the General Assembly be increased to \$4 per day was defeated by a vote of 51-29. The resolution was laid on the table and was given no further considera-

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32. Senate Journal, 68th Session, 1959.

33. Following are some of the proposals: House: One member for each county, but not more than 120; Senate not less than one-third nor more than one-half the membership of the House. House, 80; Senate, 40; House 70; Senate, 30; House, 115; Senate, 35; House, 116; Senate, 34; See Conv. Journal, 354, 361-4, 366, 372-5, 385-7.

34. General Laws, 35th Session, 9.

35. Laws, 39th Session, 6.

36. R. S., 1852, l. 306.



tion.<sup>37</sup> Two years later, in 1857, a resolution instructing the House Judiciary Committee to enquire into the expediency of amending the Constitution to provide that each county should be entitled to one representative in the lower house, was promptly rejected.<sup>38</sup> In 1859, a resolution was introduced in the House proposing to reduce the number of senators to 30 and the number of representatives to 75 in order to lighten the burden of taxation and because a lesser number of members would do the business of the General Assembly "with more dispatch, equally as well, and perhaps better."<sup>39</sup> In 1861, three resolutions were under consideration, one proposing to reduce the membership of the Senate to 36 and the House to 72; a second to fix the membership of the Senate at 15 and the House at 30; and a third to reduce the number of senators to 30 and the representatives to 60. None of these resolutions were seriously considered.<sup>40</sup>

In 1889 an elaborate plan for the apportionment of senators and representatives was presented in the House but was indefinitely postponed.<sup>41</sup>

In 1895, a plan for apportioning senators and representatives and providing for proportional representation was embodied in a resolution which was introduced in the House. According to the provisions of this plan, the Senate would consist of 60 members, chosen from 20 senatorial districts, in such manner that not more than two senators from any district would belong to the same political party. The membership of the House of Representatives was to be based on population and each county was to have one representative for every 25,000 persons resident therein. The resolution was reported favorably by committee but it was never advanced to maturity.<sup>42</sup>

In 1897 an amendment fixing the membership of the Senate at 25 and the House at 50 was proposed but was never reported from committee.<sup>43</sup>

In 1901 an amendment to the Constitution was proposed prescribing the manner of apportioning senators and representatives. The provisions of the amendment are rather ambiguous and contradictory but the obvious purpose of the measure was to prevent

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37. House Journal, 1855, 201, 224.

38. House Journal, 1857, 521; Indianapolis Sentinel, February 13, 1857.

39. House Journal, 40th Session, 213.

40. House Journal, 41st Session 578, 1043, 380; Senate Journal, 607.

41. House Journal, 56th Session, 131.

42. House Journal, 59th Session, 110.

43. Senate Journal, 60th Session, 798.

electors from voting for more than one senator or representative. The measure was indefinitely postponed.<sup>44</sup>

**Initiative and Referendum.**—A constitutional amendment providing for the initiative and referendum was first proposed in 1897, but was indefinitely postponed because other amendments were pending consideration. This measure provided for the legislative initiative and referendum only and applied to the State as a whole and any political sub-division thereof.<sup>45</sup> The same amendment was proposed in 1899 and was again postponed.<sup>46</sup> During the session of 1911 an amendment providing for both the constitutional and the legislative initiative and referendum on petition of 8% of the electors was presented in the House and although it was favorably reported by committee no subsequent action was taken.<sup>47</sup>

**Local or Special Legislation.**—Under the Constitution of 1816, one of the evils most frequently complained of was the passage of a large and constantly increasing number of local and special laws. The privilege was undoubtedly abused, and its grotesque and baneful consequences were repeatedly pointed out by the Governors in their messages to the General Assembly. These repeated warnings produced no perceptible results, and one of the most effective arguments which was employed to induce the electorate to accede to the calling of a constitutional convention was that vast sums of money could be saved and the body of the statute law clarified by the elimination of this practice. In their zeal to suppress the demands of communities for special legislation, the Convention swung rather too far in the opposite direction and local enterprises were undoubtedly temporarily stultified by the constitutional barrier erected. Hence arose a demand for the modification of this provision of the Constitution and an amendment was proposed as early as 1855 providing that laws need not be uniform in their operation in all parts of the State. As the legislature adjourned before the measure could be properly matured, the subject dropped out of consideration for a half dozen years.<sup>48</sup> The failure of the General Assembly to agree on any amendments in 1855 aroused considerable hostile criticism.

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44. House Journal, 62nd, Session, 706.

45. Senate Journal, 60th Session, 221.

46. Senate Journal, 61st Session, 482.

47. House Journal, 67th Session, 72.

48. House Journal, 38, 784; Ind. Journal February 15 and 22; *Sent.* February 15, 1855.

In their issue of March 8, 1855, the Indianapolis Journal said: "The limit . . . upon local legislation is about to prove an almost unmitigated curse. It has not banished local matters as subjects of legislation, for they must be provided for, and to do this, the mode resorted to, is to use general words, which necessarily apply to every body and almost everything." They gave as an example a law providing for the transfer of a part of one railroad to another which would be a proper subject of local legislation. "But this would be local legislation, and our tyrant Constitution, for it is a tyranny and nothing else, won't allow this," the result being the passage of a general law "Susceptible of terrible abuses." The unconstitutionality of local legislation they regarded as a "miserable feature." When the question of calling a constitutional convention was submitted to the people in 1859, the proponents of local legislation entertained the hope that the subject could be adjusted by the convention. The overwhelming defeat of this proposition renewed their determination to secure the necessary amendment by the legislative process. On January 29, 1861, the Indianapolis Journal urged the General Assembly to adopt needful amendments, among others a modification of the Constitution providing "That matters entirely local, could be provided for by local legislation."

Within a few years the citizens of the State had become accustomed to general laws and the demand for the restoration of local legislation subsided and was not revived until 1877 and then only in a modified form. On January 10 of that year the constitutional amendment authorizing the passage of special laws fixing the fees and salaries of public officers was introduced and passed.<sup>49</sup> During the campaign of 1878, the question of a material reduction in the fees and salaries of public officials was made a paramount issue, and at the session of 1879 all parties stood pledged to bring about a reduction and adjustment of the fees and salaries of public officers. As a result the pending amendment was adopted and submitted to the people for ratification in 1880. Having failed to receive the required constitutional majority it was resubmitted in 1881 and was adopted and incorporated in the Constitution.

**Terms of State and County Officers.**—The Constitution makers of 1850, without any very logical reason, fixed the terms of some of the State and county officers at four years and others at two years. This was not a grave or serious defect of the

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49. Senate Journal 50th Sess. 70, 617; House Journal 464, 465. Laws 51, 53.



Constitution but it proved rather troublesome and unsatisfactory and numerous unsuccessful attempts were made to fix the tenure of all public offices at four years. The best formal argument for a uniform tenure of public officers was presented by Governor Gray in his biennial message to the General Assembly in 1889. There was no good reason, the Governor said, why some officers should hold office for two years and others, with no greater duties and responsibilities, for four years. Two years were too short a time to enable an officer to acquire the necessary knowledge to discharge his duties efficiently; besides, there was manifested "a willingness to continue a faithful official four years in office" and "a strong public sentiment . . . against electing an administrative officer for a longer period." Moreover, all temptation should be removed from an officer to use his office and neglect his duties to procure re-election.<sup>50</sup> In 1886, both parties endorsed the amendment fixing the term of all county officers at four years which was then pending;<sup>51</sup> in 1888, the Republicans endorsed the same amendment, which was still pending;<sup>52</sup> and in 1890, when amendments were pending fixing all offices, both State and county, at four years, the entire group was endorsed by the Republicans.<sup>53</sup>

Between 1881 and 1913, amendments of this kind have been before the General Assembly repeatedly but they never passed both houses of two succeeding General Assemblies. They were incorporated in the Marshall constitution and the Stotsenburg amendments and were lost with the rest of these measures.<sup>54</sup>

**Method of Amending Acts.**—The Constitution of 1816 contained no provision relative to the amendment of acts and hence numerous methods were employed, some of which were exceedingly ambiguous and bewildering. A provision was incorporated in the Constitution of 1851 providing that no act should be revised or amended by mere reference to its title but that the act revised or section amended should be set forth. The language of this section is ambiguous and is capable of two interpretations: it means either that the section to be amended shall be set forth

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50. House Journal, 56th Session, 47.

51. Indianapolis Sentinel, August 12, 1886, and Indianapolis Journal, September 3, 1886.

52. Indianapolis Journal, August 9, 1888.

53. Indianapolis Journal, September 11, 1890.

54. For proceedings on the four year tenure of office amendments see House Journal, 1883, 704, 706; 1885, 932, 1383; 1887, 133, 736; 1889, 919; 1891, 1474; 1893, 655, 657; 1895, 280; 1897, 551; 1903, 317, 1140; 1911, 19. Senate Journal 1887, 798, 1889, 1509, 1510-11; 1891, 1252; 1893, 214; 1899, 65; 1901, 83.

in full in its original form, followed by the section in its amended form; or it means that the section as amended only shall be set forth. During the first two sessions of the General Assembly under the present Constitution both interpretations were placed upon this provision and both methods were employed. So great was the confusion that on January 12, 1853, the House adopted a resolution instructing the Judiciary Committee to submit a report interpreting this provision of the Constitution. On November 28, 1854, the clause of the Constitution prescribing the method of amendment was judicially construed in *Langdon v. Applegate*,<sup>55</sup> in which decision the court, speaking by Mr. Justice Hovey, held that in amending acts both the act revised and the act as amended must be set forth in full. To that opinion Judge Stuart dissented. The decision of the court was unsatisfactory since the amendment of acts became an exceedingly cumbersome matter and moreover, it had seriously unsettled the statutory laws of the State, and rendered a large number of laws unconstitutional. Hence, in 1855 the Kilgore bill contained a clause providing that in the amendment of acts only the section as amended need be set forth in full. The amendment was lost, however, for want of a constitutional majority, the vote being 44-30.<sup>56</sup> The method prescribed by the court was followed with great dissatisfaction until 1867, when, at the November term, in *Greencastle Turnpike Co. v. State*,<sup>57</sup> the line of decisions, following *Langdon v. Applegate*, was completely overturned and the conclusion was arrived at that in amending acts it is not necessary to set out at full length the original section or act but only the section or act as revised or amended. The conclusion in this case is the only rational one and has been followed since that time without deviation and in the amendment of acts is entirely satisfactory. At the time, however, it again unsettled the statute law and at the session succeeding the promulgation of the decision, the Senate adopted a resolution instructing the Judiciary Committee to inquire in what condition this decision had left the statutes on the subject of decedents' estates and what legislation was necessary.<sup>58</sup> No report was made and since that time no question has been raised as to the method of amending acts.

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55. 5 Ind. 327. Reaffirmed with reluctance in *Rogers v. State*, 6 Ind. 31; *Wilkins v. Miller*, 9 Ind. 100; *Littler v. Smiley*, 9 Ind. 116; *Kennon v. Shull*, 9 Ind. 154; *Alexander v. State*, 9 Ind. 337 and *Armstrong v. Berreman*, 13 Ind. 422.

56. House Journal, 38th Session, 784.

57. 28 Ind. 382.

58. Senate Journal, 46th Session, 610.

**Common School System.**—In 1854 the expanding school system of the State was seriously damaged by an adverse judicial construction placed upon the common school provision of the Constitution. The educational provisions of the old Constitution had been sufficiently elastic to admit of adequate and diversified financial support of the school system. The new Constitution provided for a uniform distribution of the State school funds in proportion to the number of pupils regularly enrolled in the common schools of each county. In 1852, in providing statutory regulations for the State educational system, the General Assembly provided, *inter alia*, that “the voters of any township shall have power, at any general or special meeting, to vote a tax for the purpose of building or repairing school houses, and purchasing sites therefor, providing fuel, furniture, maps, apparatus, libraries or increase thereof, or to discharge debts incurred therefor, and for continuing their schools after the public funds shall have been expended, to any amount not exceeding annually 50 cents on each \$100 of property, and 50 cents on each poll.”<sup>59</sup> Many school corporations of the State availed themselves of the opportunity afforded by this statute to promote their local schools by the imposition of a local, supplementary school tax. In November, 1854, the Supreme Court held that this act was unconstitutional as it would operate ultimately in the destruction of the uniform school system contemplated in and devised by the Constitution.<sup>60</sup> The effect of this momentous decision was to create a State-wide demand for the removal of the constitutional obstruction to a liberal educational policy.

At the ensuing session of the General Assembly two amendments to correct this difficulty were proposed in the House but neither was advanced to maturity.<sup>61</sup> Nothing further was done until the special session of 1858, when two measures were again proposed in the House. One of these measures developed the plan which was repeatedly proposed until the discussion of this question was discontinued. This proposal was to amend the Constitution so as to enable school districts, including civil townships and incorporated towns and cities to levy taxes for school purposes. The committee which had this resolution under consideration reported that in their judgment it would be inexpedient to authorize cities and towns to levy additional school taxes, but that it

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59. Section 130, c. 98, I. R. S., 1852.

60. *Greencastle Township v. Black*, 5 Ind. 557.

61. *House Journal*, 1855, 481 and 784.



would be expedient to empower civil townships to do so. The other measure was designed to amend the Constitution to permit special legislation in providing for the support of common schools. Before the measures could be properly considered, the special session had adjourned.<sup>62</sup>

The failure of the General Assembly to provide relief for the common schools occasioned considerable disappointment and called forth adverse criticism. In its issue of December 18, 1858, two days after the final disposition of the school amendment, in criticising some of the provisions of the Constitution, the *Indianapolis Journal* said: "It prevents the passage of a proper and efficient school law, as it razes everything down to a foolish and ridiculous uniformity, which makes successful legislation impossible." By this defect "we have no free schools," children were "growing up in ignorance" and the day was not far distant when Indiana would "not only be the hindmost free State in education, but the hindmost of all, the butt, the by-word and the laughing stock of the Union." The only way to free the State was to "make a bold and prompt move to wipe out the barbarous and ridiculous Constitution which fetters our legislation on this subject."

Under the stimulus of a determined public demand, the General Assembly, at the regular session of 1861, adopted two amendments authorizing cities, towns and townships to raise supplementary school revenue under such regulations as the General Assembly might prescribe.<sup>63</sup> As a corollary to this proposed amendment and obviously as an interpretation of its spirit and purpose a resolution was introduced in the House on January 21 declaring that the school funds enumerated in the Constitution should forever remain a perpetual and consolidated fund for the support of common schools, subject to be increased but not diminished; that such fund should have "a uniform and general application" throughout the State, giving to each county its quota, "in proportion to the number of children therein"; and that such additional revenue as was produced in each county from direct

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62. House Journal, 1858, 140, 193, 214 and 236; Brevier Report, 121 and 145.

63. The first of these amendments passed the House by a vote of 77-13 and the Senate by a vote of 31-4; the second amendment passed the House by a vote of 70-16 and the Senate by a vote of 35-4. Senate Journal, 1861, 108, 238, 563 and 589; House Journal, 397, 470, 568, 617, 397, 471 and 505; Laws 1861, 186. A resolution proposed in the Senate on February 10, 1859, on this subject was never reported from committee. Senate Journal, 464 and 496; Brevier Report, 163.

taxation and fines and forfeitures should be for the exclusive use of the county.<sup>64</sup>

At the 43d session of 1863 the pending common school tax levy amendments were introduced in both houses. Mr. March, the author of the amendments, explained that the disastrous effect of the Supreme Court decision on the common school system rendered the adoption of these amendments imperative. As a member of the constitutional convention, he assured the Senate that no thought had ever been entertained that school corporations would be deprived of the authority of levying local taxes.<sup>65</sup> The amendments were both incorporated in one resolution in the Senate and passed that body, under suspension of the rules, by a vote of 36-7. In the House, the resolution which had been adopted by the Senate was referred to the Committee on Education who presented a divided report. The majority report recommended passage; the minority report recommended indefinite postponement for the reason that the adoption of the resolution would "eventually destroy our common school system" and that any change at that time was "unwise and injudicious." The division of sentiment on the question prevented action and the session adjourned without maturing the amendment.<sup>66</sup>

The failure of the common school amendment rendered its re-introduction necessary. Accordingly, it was introduced in both houses at the session of 1865. In the Senate, the amendment was incorporated in two resolutions, one of which passed by a vote of 43-2 and the other by a vote of 46-0. On March 1, one of the Senate resolutions was laid on the table and the other failed of passage by a vote of 41-31, but on the same day this resolution was reported passed and it was approved by the Governor on March 6. The same resolutions were introduced in the House but were adversely reported by the committee because the relief sought could be obtained by incurring the general tax and

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64. On February 16, a resolution was introduced in the House instructing the Judiciary Committee to report who were entitled to the common school fund under the Constitution, but apparently no action was taken. House Journal, 41st Session, 487.

65. Brevier Report, 1863, 65ff.

66. The consideration of the Senate measure was given precedence in the House and the two House resolutions were speedily disposed of. Senate Journal, 43d Session, 65; House Journal, 135. A bill providing for the submission of these amendments to the people was introduced in the Senate on March 5, but as the resolution was not adopted the consideration of the bill was discontinued. Senate Journal, 43d Session, 662.

the Committee on Education was at that time preparing a bill with that object in view.<sup>67</sup>

At the session of 1867, the pending school amendment was introduced, but the General Assembly had determined to make more general amendments and the incidental changes involved made it necessary to submit the amendment to the General Assembly of 1869.<sup>68</sup>

On March 9, 1867, the General Assembly enacted a measure, substantially identical with the act of 1852, authorizing school corporations to levy an annual tax of not to exceed 25 cents on each \$100 of taxable property and 25 cents on each poll for local school purposes. When the General Assembly convened in 1869, the constitutionality of this act had not been tested, but Governor Baker informed the legislature that in every locality where the tax had been levied "the people seem to have acquiesced in the law under which it was imposed as a constitutional exercise of the taxing power" and he thought that if this acquiescence should continue the schools would be tolerably well provided for. Accordingly, no measures were introduced in 1869. The act has never been overturned and no attempt has since been made to amend this provision of the Constitution.

**Judiciary.**—An unusually large number of attempts have been made to amend the various sections of the Constitution relating to the judiciary but only one attempt has been successful. Among the amendments submitted to the electors in 1880 and 1881 was one which permitted the creation of superior courts.<sup>69</sup> This amendment, after having failed of adoption in 1880, was successfully ratified in 1881 and became a fully operating part of the Constitution. Among other attempts to amend the judiciary sections of the Constitution were the following: Increasing the membership of the Supreme Court; providing for the election of judges at special elections; dividing the Supreme Court into benches for the consideration of cases.

In 1873 an amendment was adopted fixing the number of Supreme Court judges at not less than three nor more than seven, so divided that one-third of the panel should retire biennially.<sup>70</sup>

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67. Senate Journal, 1865, 32; House Journal, 60 and 63; Laws, 1865, 131.

68. Senate Journal, 45th Session, 653 and 835; similar measures were also under consideration in the House. House Journal, 45th Session, 76 and 265.

69. Senate Journal, 50th Session, 618; Laws, 51st Session, 53; House Journal 51st Session, 284.

70. Senate Journal, 48th Session, 1031.



In 1875, this amendment was indefinitely postponed in the House and placed on the calendar but not considered by the Senate.<sup>71</sup> In 1877 the same amendment was adopted by both Houses;<sup>72</sup> in 1879, the amendment was adopted by the Senate but rejected by the House. In 1885, the same amendment was under consideration in the Senate but failed of adoption for want of a constitutional majority.<sup>73</sup> During the same session an amendment was under consideration in the House providing that the Supreme Court should consist of not less than six nor more than nine judges; that the State should be divided into three districts from which not less than two nor more than three judges should be elected by the electors of the whole State; that the court should be divided into two or three benches with three judges to a bench; and that each bench should have jurisdiction of certain classes of cases.<sup>74</sup> In 1887 a resolution was under consideration fixing the number of judges at not less than six nor more than nine.<sup>75</sup> In 1889, an amendment was adopted fixing the number of judges at not less than five nor more than nine, to be elected for terms of eight years, one-half to retire every four years, and to sit in divisions or en banc.<sup>76</sup> At the same session an amendment was under consideration fixing the number of judges at ten, elected for terms of seven years and authorizing the General Assembly to increase the number of judges as business might demand; the chief justice was to be selected annually by a vote of the court and the court was to sit in divisions of three, with the chief justice presiding, and to hear such cases as might be allotted to them.<sup>77</sup> In 1891, because of the questionable legality of the procedure in adopting the Supreme Court amendment in 1889, the resolution was rejected, and a resolution was proposed but not adopted fixing the number of Supreme judges at 11.<sup>78</sup> In 1895 a resolution was presented fixing the membership of the court at not less than 9 nor more than 15 judges; the amendment was reported from committee to provide that the number of judges of the Supreme Court should be not less than 7 nor more than 16 judges, the number to be always 7, 10, 13 or 16; the court, likewise, was to sit in divisions or

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71. House Journal, 49th Session, 160.

72. Senate Journal, 50th Session, 619.

73. Senate Journal, 54th Session, 844.

74. House Journal, 54th Session, 1211, 1256.

75. House Journal, 55th Session, 147.

76. Senate Journal, 56th Session, 1513.

77. House Journal, 56th Session, 487.

78. Senate Journal, 57th Session, 46.

en banc and the chief justice was to be elected by the court. In its amended form the amendment passed both houses.<sup>79</sup> In 1897, this amendment was rejected and another was adopted fixing the number of judges at not less than 5 nor more than 11,<sup>80</sup> and in 1899 this amendment was re-adopted and submitted to the electors for ratification.<sup>81</sup> This amendment was submitted to the people on November 6, 1900, and 314,710 votes were cast in favor of its adoption and 178,960 votes were recorded against it. The decision of the Supreme Court in the case called *In re Denny* held that the amendment had not been adopted. In 1901, the amendment was again adopted;<sup>82</sup> in 1903 this and another amendment proposing to revise the whole judiciary article were rejected;<sup>83</sup> in 1905 and 1907 similar amendments were proposed, considered and rejected.<sup>84</sup>

The Marshall Constitution and the Stotsenburg amendments both proposed marked changes in the judiciary sections of the Constitution but as neither measure was adopted the Supreme Court is still limited to five members.

**Qualifications to Practice Law.**—With little apparent effort, the section providing for the admission to the bar on furnishing satisfactory proofs of good moral character was incorporated in the Constitution, and prior to 1885, no attempt was made to dislodge it. Since that time numerous attempts have been made to either strike the clause from the Constitution or to alter the provision so as to authorize the General Assembly to prescribe educational tests. No difficulty has been encountered in inducing the General Assembly to adopt this amendment but because of the indifference of the electorate and the fact that the attention of the voters has not been specifically called to the importance of this amendment during the campaigns it has never secured sufficient votes to insure its adoption.

The amendment was first proposed in 1885 by Mr. William Dudley Foulke, but was never reported from committee.<sup>85</sup> In 1889 the amendment was adopted by both houses by substantially unanimous votes.<sup>86</sup> As some doubt existed as to the legality of

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79. Senate Journal, 59th Session, 106, 836.

80. Senate Journal, 60th Session, 584, 735, 924; House Journal, 1495.

81. House Journal, 61st Session, 1346; Laws, 560.

82. House Journal, 62nd Session, 1147.

83. Senate Journal, 63d Session, 157.

84. House Journal, 64th Session, 1159; Senate Journal, 65th Session, 2465.

85. Senate Journal, 54th Session, 626.

86. Senate Journal, 56th Session, 1124.

the procedure by which this and other amendments proposed in 1889 were adopted, it was voted down on recommendation of a select committee appointed to investigate the question.<sup>87</sup> The amendment was not proposed again until 1897, when it passed both houses by substantial majorities,<sup>88</sup> and was readopted by the General Assembly of 1899, and, with the Supreme Court amendment, was submitted to the electors at the general election of 1900.<sup>89</sup> At the general election held on November 6, 1900, the lawyer amendment received a majority of the votes cast on that proposition but not a majority of the votes cast at the election, and in the case known as *In re Denny*, decided at the November term, 1900, the Supreme Court held that the amendment had not been adopted.<sup>90</sup> Accordingly, at the session of 1901, immediately succeeding, the General Assembly again adopted the lawyer amendment and submitted it to the next General Assembly for consideration.<sup>91</sup> In 1903, the pending lawyer amendment was ignored and the same amendment was adopted *de novo* by both houses.<sup>92</sup> A somewhat similar amendment was under consideration in the Senate during the same session. This amendment provided that a candidate for admission to the bar must possess the necessary learning and other qualifications to be prescribed by the State Supreme Court.<sup>93</sup> In 1905 the pending lawyer amendment was readopted<sup>94</sup> and submitted to the people. At its convention held on April 11, 1906, the Republicans endorsed this amendment and urged its adoption.<sup>95</sup> At the election of 1906, the lawyer amendment for a second time failed of ratification and it was again adopted by the General Assembly of 1907,<sup>96</sup> and readopted by the General Assembly of 1909 and submitted to the electors,<sup>97</sup> at the general election of 1910 and again defeated. This provision was contained in the Marshall constitution of 1911 and the Stotsenburg amendments of 1913 but as both measures were defeated, the Constitution still permits the admission of candidates to the bar without academic qualifications.

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87. House Journal, 57th Session, 201, 1255, 1256, 1461, 1463; Senate Journal, 114, 143, 145.

88. House Journal, 60th Session, 1571.

89. House Journal, 61st Session, 1188; Laws 560; Senate Journal, 948.

90. 156 Ind. 104.

91. House Journal, 62nd Session, 1780.

92. House Journal, 63d Session, 738.

93. House Journal, 63d Session, 826.

94. House Journal, 64th Session, 1453.

95. Indianapolis Star, April 12, 1906.

96. Senate Journal, 65th Session, 2417; House Journal, 2390.

97. Laws 1909, 501.



**Taxation.**—In spite of the importance of the question of taxation very few attempts have been made to liberalize the financial provision of the Constitution. The first taxation amendment was proposed in 1891, this amendment, which was framed by a select House committee, added a proviso to the present tax provision of the Constitution providing that corporations might be taxed upon their net or gross earning in such manner as the General Assembly should prescribe. The amendment was adopted by the House by a vote of 75-0 and by the Senate by a vote of 41-1.<sup>98</sup> In 1893, this amendment was readopted by the House by a vote of 87-1, but rejected by the Senate by a vote of 16-30.<sup>99</sup> In 1909 an amendment was proposed whereby householders whose entire property did not exceed \$300 and the property of the veterans of the Civil War and widows and orphans to any amount not exceeding \$1,000 might be exempted from taxation. This amendment was indefinitely postponed with very little consideration.<sup>1</sup> The Stotsenburg amendments of 1913 contained a provision authorizing the General Assembly to classify different kinds of property and to provide for a different manner and basis of assessment and rate of taxation for each class. In his message to the General Assembly on January 7, 1915, Governor Ralston opposed the adoption of the tax amendment. The existing provision of the Constitution that taxation should be uniform and equal “appeal to a man’s innate sense of justice.” If there was not uniformity and equality in the assessment of property, “the fault is with the public officials sworn to obey and enforce the law and not with the people’s supreme law.” By virtue of the proposed amendment, “there is nothing to prevent a legislature from assessing bank stock and brewery stock at 50 cents on the dollar of its true value and the grain and herds of the farm at their full true value. Every legislature would be besieged to lower the rate on certain classes of property and to raise it on others, and at every session of our General Assembly there would be an alignment of interests for a new classification . . . with the result that often the victory would be with the strong.”<sup>2</sup> This amendment was rejected along with other proposed constitutional changes embraced in the same measure. So pressing had the demand for changes in taxation become, however, that a special commission was created to inves-

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98. Senate Journal, 57th Session, 1250.

99. House Journal, 58th Session, 651.

1. Senate Journal, 66th Session, 109.

2. House Journal 69th Session, 49.

tigate the whole question of taxation and report to the General Assembly of 1917.<sup>3</sup> At its Convention held in 1916, the Republicans adopted a resolution recommending the adoption of a constitutional amendment providing for a limitation of the tax rate.<sup>4</sup> and the whole question is now (1916) being discussed during the campaign, and a voluminous tax report is being compiled.

**Admitting Negroes to the Militia.**—As originally adopted the present Constitution excluded negroes and mulattoes from service in the State militia. Obviously this discrimination was overlooked in 1880 and 1881 when the other civil and political disabilities of the colored race were removed. In 1885, four years after the adoption of the group of negro enfranchisement amendments, an amendment was adopted admitting negroes to the militia.<sup>5</sup> In 1886, the pending amendment was endorsed by the Republican platform.<sup>6</sup> On account of the deadlock in the General Assembly in 1887 over the election of Lieutenant-Governor, the pending amendment was lost.<sup>7</sup> In 1888, the amendment was again endorsed by the Republicans<sup>8</sup> and was re-adopted in 1889.<sup>9</sup> As some doubt existed as to the legality of the procedure in adopting this amendment, it was voted down in 1891 and was not subsequently re-introduced.<sup>10</sup> The amendment was incorporated in the Marshall Constitution and the Stotsenburg amendments, but as those measures were both lost, the provision discriminating against negroes is still in operation.

**Regulation of Railroads.**—The first railroad charters in Indiana were granted in 1832. The first actual construction work was done in 1834. On October 1, 1847, the first train reached Indianapolis. The State was at first a partner in these enterprises but retired from active participation in the business about 1852. In 1850 there were 212 miles of railroad in successful operation in the State and upwards of 1,000 miles in addition had been surveyed. The construction of railroads and the inevitable emergence of the perplexing problems of transportation led to the passage of a considerable body of legislation designed to regulate and control these new agencies of transportation, and within a

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3. Laws 1915, 477.

4. Indiana Daily Times, April 19, 1916.

5. House Journal, 54th Session, 308, 311; Senate Journal, 973.

6. Indianapolis Sentinel, August 12, 1886.

7. Senate Journal, 55th Session, 799.

8. Indianapolis Journal, August 9, 1888.

9. Senate Journal, 56th Session, 177, 1124; House Journal, 122.

10. House Journal, 57th Session, 1461.

comparatively short time after the complete establishment of this new system of transportation, charges of excessive fares, extortionate rates and discrimination in service were made by shippers and patrons. The agrarian agitation which expressed itself with exceptional violence in the middle west was reflected in many ways in the legislation of this State but the problem had not become so acute as to lead to a demand for a fundamental constitutional change until 1871. On January 17, Mr. Wymer a Republican, introduced a resolution in the House proposing an amendment to the Constitution authorizing the General Assembly to enact laws from time to time establishing reasonable maximum rates for the transportation of freight and passengers, and prohibiting running contracts between railroad companies whereby discrimination was made in favor of any company as against other companies owning connecting roads. The resolution was referred to the Judiciary Committee but was never reported back.<sup>11</sup>

On January 27, 1873, the House adopted a resolution instructing the Judiciary Committee to inquire into the constitutional authority of the General Assembly to fix the rates for the transportation of freight and passengers over inter-state and intra-state railroads.<sup>12</sup> On March 10, Mr. Hatch, a Republican, introduced a resolution in the House designed to amend the Constitution so as to authorize the General Assembly to establish reasonable maximum rates for the transportation of freight and passengers, and to correct abuses and prevent unjust discriminations and extortions in freight and passenger tariffs. On final vote this resolution failed to receive a constitutional majority, the vote being 41-9, 20 members being present but not voting.<sup>13</sup>

As the railroads were being fairly well regulated by law and by commissions created from time to time to prescribe rates and insure the public adequate service, no further attempts were made to incorporate restrictions in the Constitution. In 1901, however, a bill passed the General Assembly authorizing railroad companies to consolidate, but was vetoed by the Governor. In 1903, the same or a similar bill was introduced. It was assumed by the opponents of this measure that the passage of this bill "would be a surrender of the sovereign right of the State . . . over the railroad companies, and the deprivation of the courts of the State . . . of the right of jurisdiction over the railroad com-

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11. House Journal, 47th Session, 196.

12. House Journal, 48th Session, 227 and 944.

13. Senate Journal, 63d Session, 874.



panies.” A resolution was, therefore, introduced in the senate proposing an amendment to the Constitution prohibiting the consolidation of any and all inter- and intra-state railroads. The Judiciary Committee, to whom this bill was referred for consideration, submitted a divided report, and the majority report, recommending indefinite postponement, was concurred in.<sup>14</sup>

**Control and Suppression of the Liquor Traffic.**—The first concrete and organized demand for the control and suppression of the liquor traffic by constitutional amendment arose during the fifties when the so-called Maine Law movement was gaining nationwide converts. The temperance people of this State perfected an organization, having local coöperating units scattered throughout the entire State, and they held frequent conventions to devise ways and means of suppressing the liquor traffic. The State temperance convention of 1859 was held in Indianapolis on January 18. Several plans were proposed and considered for the reduction of intemperance. Among these was the proposal that the General Assembly be memorialized to adopt a constitutional amendment conferring on the law-making body the power to enact laws “effectually prohibiting the sale of intoxicating liquors as a beverage, and submitting the same to a vote of the people at a special election.” This resolution was defeated and some of the delegates then proposed that a change should be made in the Constitution so as to enable the smallest civil division of the State to vote on the question of prohibiting the sale of liquors as a beverage. This proposition was adopted and in order to embody it in a practicable form, they petitioned the General Assembly then sitting to “initiate such a change in the Constitution of the State as shall enable the counties and corporations . . . to manage these matters in their own way.”<sup>15</sup>

The enactment of more stringent liquor laws, the intervention of the War and the gradual decline of inebriacy conspired to keep this question in partial abeyance for a period of 20 years. In 1878, the Western Yearly Meeting of Friends, held at Plainfield from September 13-19, adopted a resolution demanding the passage of a constitutional amendment prohibiting the liquor traffic in any form within the State. This resolution was introduced in the House on March 10, and in the Senate on March 12, 1879,<sup>16</sup> and although it produced no visible results, it constituted a

14. Senate Journal, 63d Session, 874.

15. Locomotive, January 22, 1859; Journal, January 19, 1859.

16. House Journal, 51st Session, 1044.

symptom of the revulsion of public sentiment against an institution which many thoughtful people regarded as indefensible. In 1881, this sentiment was sufficiently strong to result in the adoption of a constitutional amendment forever prohibiting the manufacture or sale of intoxicating liquors within the State except for medical, scientific, mechanical or sacramental purposes. The passage of this amendment aroused the enthusiasm of the temperance people and scores of petitions were submitted to the General Assembly of 1883 asking for the re-adoption of the amendment and its speedy submission to the people at a special election. The opponents of the measure were equally alert, and in order to avoid criticism for voting the measure either up or down, an attempt was made to prove that the amendment had not been properly adopted and submitted to the General Assembly of 1883. In spite of much faulty reasoning and specious argument, the sounder theory prevailed in the House by a vote of only 52-35 and in the Senate by a vote of 25-23.

Having established the fact that the State-wide prohibition amendment was duly pending, it was introduced in the House for re-adoption on February 19, and, although its advancement was vigilantly and skillfully contested at every step, it finally passed the House on February 24 by a vote of 57-37. The Senate resolved to pursue a *laissez faire* policy, and declined to take any action on the measure until March 2, when, by a vote of 22-15, the resolution was ordered to be taken up for formal consideration. Nothing was done, however, until the following day when a resolution was proposed to take the amendment up and place it upon its final passage. The motion was lost by a vote of 18-22, and the session expired before the question could be brought to an issue.<sup>17</sup>

The defeat of this measure aroused much hostile criticism. As its adoption had been most strongly urged by the Republican legislators and its defeat had been compassed by the opposition of the Democratic members, it was natural that it should be regarded as a Republican measure. Moreover, when the Republican State Convention assembled on June 19, 1884, they declared unequivocally for the summoning of a constitutional convention.<sup>18</sup> It was, therefore, assumed that a convention was to be called to enact, among other reforms, a State-wide prohibition amendment. The Democratic State Convention assembled a week later, on

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17. House Journal, 53d Session, 689.

18. Indianapolis Journal, June 20, 1884.

June 25. They adopted a resolution opposing the calling of a constitutional convention; protested against the invasion of the liberties and the private property of individuals; deprecated the passage of sumptuary legislation; declared distinctly in favor of sobriety and temperance; and asserted that "a well regulated license system, and reasonable and just laws upon the subject, faithfully enforced, would be better than extreme measures which being subversive of personal liberty, and in conflict with public sentiment, would never be effectually executed, thus bringing law into disrepute and tending to make sneaks and hypocrites of our people; Therefore we are opposed to any constitutional amendment relating to the subject of the manufacture and sale of intoxicating and malt liquors."<sup>19</sup>

At the general election of 1884, the Democrats won a decisive victory and controlled both branches of the General Assembly by comfortable majorities.<sup>20</sup> As the party had gone on record as unalterably opposed to a constitutional amendment prohibiting the liquor traffic, the efforts of the temperance forces were temporarily discontinued. However, during the ensuing session of the General Assembly on February 7, 1885, a resolution was introduced in the House, designed to amend the Constitution to authorize the General Assembly to regulate or prohibit the traffic in intoxicating liquors by general laws or by laws applicable to specified portions of the State only. This resolution was indefinitely postponed.<sup>21</sup>

The Democratic State Convention of April 26, 1888, adopted practically the same plank in regard to sumptuary regulations which had been incorporated in the platform of 1884.<sup>22</sup> However, the demand for State-wide prohibition still existed. On January 18, a resolution proposing a constitutional amendment prohibiting the manufacture and sale of intoxicating liquors was introduced in the House and on January 22, the same resolution was introduced in the Senate; but both resolutions were indefinitely postponed.<sup>23</sup>

During the session of 1895 the famous Nicholson Law was enacted and approved on March 11. The electorate displayed a lively interest in this measure and during its pendency scores of

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19. Indianapolis Sentinel, June 26, 1884.

20. Senate: 36 Democrats and 14 Republicans; House: 63 Democrats and 36 Republicans.

21. House Journal, 54th Session, 501.

22. Indianapolis Sentinel, April 27, 1888.

23. House Journal, 56th Session, 929 and Senate Journal, 218.



petitions were presented in both Houses demanding its passage. An equally insistent demand was made for regular instruction in the public schools relative to the harmful and narcotic effects of alcoholic drinks; in fact the campaign of education which sought to express itself in this form had been inaugurated as early as 1884 when the defeat of the State-wide prohibition amendment had become an assured fact. Such a law was passed at this session and approved on March 14. Only one formal petition was presented requesting a constitutional amendment prohibiting the manufacture and sale of intoxicating liquors.

After the passage of the Nicholson law, the liquor question remained in abeyance for a period of approximately 12 years. At the session of 1907 a resolution was introduced in the House proposing a constitutional amendment declaring it unlawful either to sell or to grant a license to sell intoxicating liquors. The resolution was referred to the Committee on Public Morals and reported back in an altered form prohibiting the manufacture, sale or importation of intoxicating liquors, but it was not subsequently considered.<sup>24</sup>

In 1908, Governor Hanly called a special session of the General Assembly for the purpose of passing a county local option law. The emphasis placed upon the liquor traffic by the formal act of the Governor of the State in calling an extraordinary session aroused a State-wide interest in the cause of temperance, and petitions, signed by upwards of 30,000 voters, were presented in the House and Senate asking for the adoption of a constitutional amendment prohibiting the manufacture and sale of intoxicating liquors. Similar petitions were presented by the Woman's Christian Temperance Union of Indiana; by the Intercollegiate Prohibition Association of De Pauw University; the local unions of the Woman's Christian Temperance Union of Franklin and Napanee and the Western Yearly Meeting of Friends' Church, representing 16,000 members. As a result of these demands, a resolution was introduced proposing an amendment to the Constitution forever prohibiting the manufacture and sale of intoxicating liquors but as some doubt existed whether an amendment could be legally proposed while another amendment was pending, the consideration of the prohibitory amendment after passage by the House was indefinitely postponed.<sup>25</sup> The same amendment was proposed

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24. House Journal, 65th Session, 1477 and 1942.

25. Senate Journal, Special Session, 1908, 117 and 118; House Journal, 33.

at the regular session of 1909 but it was never reported back from the committee.<sup>26</sup>

In 1911, the Democrats came back into power and proceeded to repeal the county local option law and to enact in its stead the township option law. Since that time, the agitation for constitutional measures affording more stringent regulation of the liquor traffic has abated and no formal resolutions have been proposed.

**Miscellaneous Amendments Proposed.**—Of the Miscellaneous amendments proposed and considered but never adopted the following are the more important; changing the time acts shall take effect; the use of emergency clauses; providing for the holding of more than one county office; abolishing the office of State superintendent of public instruction; authorizing the issue of State house bonds; acknowledging God as the source of all authority and power; forbidding subscriptions to corporate stock by any city, town, township or county; declaring the vote necessary to pass acts; defining a quorum; providing for the suspension of the rules; redefining the process of amendment; authorizing the Governor to veto items in appropriation bills; prohibiting the hiring of convicts; eliminating the code commissioners provision; reimbursing public officials for the loss of public money; authorizing municipalities to own and operate their own utilities and to frame and adopt their own charters; minimum wage of workers; and filling vacancies in public office.

By the provisions of the Constitution acts take effect when they are distributed to the several county clerks and when the Governor has issued his proclamation, unless an emergency is declared, in which event they become effective at once. This was somewhat different from the practice under the Constitution of 1816 and an unsuccessful attempt was made in 1855 to alter this provision.<sup>27</sup>

No constitutional amendment was proposed to alter the provision relative to emergency clauses, but the ambiguity of the provision led to the introduction of a resolution in 1853 instructing the Judiciary Committee to report whether when an enactment contains an emergency clause it is necessary to make mention of it in the title. On November 26, 1855, this provision was judicially construed and no trouble has since arisen.<sup>28</sup>

In 1859 an attempt was made to amend the Constitution to provide that the offices of clerk, recorder and auditor or any two

26. House Journal, 66th Session, 1125.

27. House Journal, 38th Session, 784.

28. *Hendrickson v. Hendrickson*, 7 Ind. 13.

of them might be held by the same person. The resolution was reported unfavorably and not subsequently considered.<sup>29</sup>

The section creating the office of State superintendent of public instruction was proposed as an additional section on the floor of the convention and was adopted by a vote of 78-50.<sup>30</sup> The office was created by the general school act of June 14, 1852.<sup>31</sup> There was never any serious objection to the creation of this office but in 1855 and 1858 bills were introduced to abolish the office but were never given serious consideration.<sup>32</sup> No further attempt was made to amend this section except to extend the term of office to four years.

In 1877, when provision was being made for the construction of a new State house, a resolution was introduced in the Senate proposing an amendment to the Constitution authorizing the General Assembly to issue \$3,000,000 worth of State house bonds. The proposed amendment was never reported from committee.<sup>33</sup>

During the Civil War, a petition, signed by some 450 persons, was presented in the General Assembly asking that the Constitution be so amended as to specifically acknowledge God as the source of all authority and power in civil government and the Lord Jesus Christ as the ruler among nations and His revealed will as of supreme authority. The proposed amendment was the subject of an elaborate report. The Jewish citizens of the State protested strenuously against the adoption of the amendment. Very little sentiment was aroused in its favor and it was rejected.<sup>34</sup>

In 1877, a resolution was introduced in the Senate proposing an amendment to the Constitution prohibiting any city, town, county or township to subscribe to the stock of any corporation or company or to give any donations of money or credit thereto or the assessment of the debt of any person or corporation on any county, city, town or township. The amendment passed both Houses but was not subsequently considered.<sup>35</sup>

The passage from time to time of apportionment bills by a party vote, gerrymandering the State, led to the introduction of a resolution in 1873, as reported by a select committee, to so

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29. Brevier Report, 1859, 73; House Journal, 215, 372.

30. Conv. Journal, 801.

31. R. S., 1852, I, 448.

32. House Journal, 38th Session, 131; House Journal, 1858, 141, 193 and 236; Brevier Report, 1858, 104, 145.

33. Senate Journal, 50th Session, 276.

34. House Journal, 44th Session, 640; Senate Journal, 434.

35. Senate Journal, 50th Session, 109 and 619.



amend the Constitution as to require a two-thirds vote in each house to pass an apportionment bill. The resolution was defeated in the House and never reported to the senate.<sup>36</sup>

The term "quorum" as used in the Constitution is not defined with precision, and as employed in actual practice it was frequently an obstacle to obtaining needed legislation or even carrying on the business of the General Assembly. The minority members of the General Assembly had frequently resorted to the practice of withdrawing from the chamber to prevent the passage of bills. Even sickness and the necessary absence of members frequently made it difficult to obtain a clear majority. During the called session of 1865 a joint resolution was introduced in the House proposing an amendment to the Constitution defining a quorum of the General Assembly to be a majority of the members elected to each house. The resolution was reported favorably but was not subsequently considered.<sup>37</sup> At the following session the same resolution was proposed but was indefinitely postponed.<sup>38</sup> In 1873, a similar amendment was proposed by a select committee but it was defeated in both houses.<sup>39</sup>

Prior to 1871, apparently, the vote necessary to suspend the constitutional rule was considered as rather problematical. On January 17 of that year, the House adopted a resolution instructing the Judiciary Committee to inquire and report whether the two-thirds vote on the suspension of the rules meant two-thirds of all the members elected or two-thirds of a quorum or two-thirds of the members present. This inquiry was authorized because there was "no settled rule established" in reference to the suspension of the rule so as to authorize the reading of a bill more than once upon the same day. The committee was also instructed to inquire whether it required two separate motions or only one to suspend the constitutional rule requiring a bill to be read on two separate days and also whether the bill should be read by sections or by title only.<sup>40</sup> Apparently no report was made. In 1873, one of the amendments proposed by the select committee was that the constitutional rule should be dispensed with by a majority vote of the members present. This amendment was adopted by the House

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36. Senate Journal, 48th Session, 1031.

37. House Journal, Called Session, 1865, 316, 453.

38. House Journal, 45th Session, 15.

39. Senate Journal, 48th Session, 1031.

40. House Journal, 44th Session, 105.

by the close vote of 51-33 but was rejected by the Senate by a vote of 23-15.<sup>41</sup>

In 1883, an amendment was proposed in the senate providing that a constitutional amendment to be adopted must receive the affirmative votes of two-thirds of the members of each house of two succeeding General Assemblies. As amendments were at that time pending consideration, the proposed amendment was withdrawn.<sup>42</sup> In 1895 an amendment was proposed that an amendment to the Constitution which was adopted by a majority vote of each house of one General Assembly might be submitted directly to the people at a general or special election. The measure was indefinitely postponed by a vote of 22-18.<sup>43</sup>

In 1885, an attempt was made to amend the Constitution so as to authorize the Governor to veto items in an appropriation bill.<sup>44</sup> The resolution embracing this amendment was never reported from committee. The same idea was embodied in the Stotsenburg amendments but was defeated with the remainder of that measure.

In 1885, a resolution was introduced in each house prohibiting the General Assembly from hiring the labor of convicts and other State wards under the contract system, but no action was taken.<sup>45</sup>

In 1885, an unsuccessful attempt was made to strike out the provision of the Constitution providing for code commissioners.<sup>46</sup>

In 1895, a resolution was introduced in the House prohibiting the General Assembly from passing local laws for the purpose of reimbursing county, township or municipal officers who had loaned, deposited or misapplied and lost public money or other property held in a fiduciary capacity or for the relief of any such officer for liability on official bonds.<sup>47</sup>

In 1899 an amendment was proposed whereby the debt limit of cities could be raised above the amount then fixed by the Constitution for the purpose of constructing or purchasing waterworks, street railways, telegraphs, telephones, electric light plants, artificial or natural gas plants, conduit systems for underground wires or any other public utility, if the proposition were

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41. Senate Journal, 48th Session, 1031.

42. Senate Journal, 53d Session, 341.

43. Senate Journal, 59th Session, 202.

44. Senate Journal, 54th Session, 186.

45. Senate Journal, 54th Session, 199; House Journal, 1261.

46. Senate Journal, 54th Session, 627.

47. House Journal, 59th Session, 407.

approved by a majority vote of the electors interested. The measure was indefinitely postponed in both houses.<sup>48</sup>

In 1901, a constitutional amendment granting greater freedom to cities was proposed. This amendment was designed to permit any city or town to frame its own charter, on motion of the local legislative authority or on petition of 5% of the legal voters. The charter was to be framed by an elected board of fifteen freeholders, not more than ten of whom belonged to the same political party, and when completed was to be submitted to the electors for ratification. Any charter so adopted might be amended by a referendum vote on initiative of the executive, or the legislative body or on petition of 5% of the voters. In granting franchises, the city was to be free of all legislative interference. All cities and towns were required to substitute direct employment and contracts with co-operative groups of workers for non-competitive contracts. In addition, the amendment was designed to permit the people of any city or town to build or buy any public utility; and two or more cities or towns were authorized to unite in the construction or purchase of any such public utilities. The amendment was reported favorably from committee but was not subsequently considered.<sup>49</sup>

In 1915, an amendment was proposed authorizing the General Assembly to create a commission to prescribe a minimum wage for workers. On recommendation of the committee, the resolution was indefinitely postponed. During the same session another amendment was proposed prescribing a somewhat different method of filling vacancies in public office.<sup>50</sup>

**Process of Amendment.**—The Constitution provides that amendments may be proposed in either branch of the General Assembly. One or more amendments may be proposed at any session. If the proposed amendment is agreed to by a majority of the members elected to each House, it is then entered on the journals of the two Houses, with the yea and nay vote, and is referred to the General Assembly chosen at the next general election. If the proposed amendment is agreed to by a majority of the members elected to each of the two houses of the succeeding General Assembly, it is then submitted to the electors for ratification and if a majority of the electors ratify the amendment it becomes a part of the Constitution. If two or more amend-

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48. House Journal, 61st Session, 332; Senate Journal, 108.

49. Indianapolis News, March 4, 1901.

50. House Journal, 69th Session, 587, 860.



ments are submitted at the same time, they must be submitted in such manner that the electors may vote on each separately. While an amendment which has been agreed upon by one General Assembly is awaiting action by the succeeding General Assembly or by the electors, no additional amendment may be proposed.<sup>51</sup>

The article relative to the adoption of future amendments was reported by the committee in the constitutional convention on January 16, 1851. The committee recommendations embraced three distinct propositions: (1) Whenever two-thirds of the members of each branch of the General Assembly thought it necessary to call a convention to revise the Constitution, they were authorized to enact the appropriate legislation and if a majority of the electors voting for representatives voted for the call of a convention, the ensuing General Assembly was required to make the necessary provisions for the election of delegates. This proposition was rejected by the Convention by a vote of 55-66.<sup>52</sup> (2) The second proposition was identical with the first section of the amendatory article as finally adopted except that proposed amendments were required to obtain the approval of two-thirds of the first General Assembly which adopted them. This section was amended to conform with its present provisions and was adopted by a vote of 77-45.<sup>53</sup> (3) The third proposition was identical with the second section of the article as finally adopted. When advanced to engrossment, this provision was eliminated by a vote of 78-48,<sup>54</sup> but it was subsequently re-proposed on the floor of the Convention and was adopted by a vote of 100-24.<sup>55</sup> Among the proposals made and rejected, two are of especial interest. One proposal, or rather three separate proposals embracing the same general idea, provided that a poll should be opened every 10, 12 or 16 years on the question of calling a convention.<sup>56</sup> The second proposal provided that at the third session and every tenth year thereafter, by a vote of three-fifths, the General Assembly, might recommend to the electors any needful amendments, which, if ratified by a majority of the electors should become a part of the Constitution.<sup>57</sup>

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51. Constitution, Article XVI.

52. Convention Journal, 830-831.

53. *Ibid.*, 839.

54. *Ibid.*, 832.

55. *Ibid.*, 856 and 693.

56. *Ibid.*, 860, 837 and 841.

57. *Ibid.*, 832.

The first amendment adopted by authority of the amendatory provision of the Constitution was in 1873. The amendment was first adopted by the General Assembly of 1871 and submitted to the succeeding General Assembly for action. Meantime the question arose as to whether the constitutional provision had been fully complied with since the amendment had not been entered in full on the journals of the two houses. Governor Baker expressed the opinion that this omission did not invalidate the amendment and he recommended its adoption. The General Assembly which met in special session in November, 1872, was a newly elected body, and, therefore, constitutionally competent to mature the amendment. Accordingly, the amendment was adopted at the special session of 1872, submitted to the electors at a special election on February 18, 1873, and ratified by an overwhelming majority. On March 7, the Governor issued his proclamation declaring the amendment in force and its validity was not only not questioned but in an obiter dicta statement in the case of *State v. Swift* in 1880, it was fully sustained.

No other amendments were submitted to the people until 1880. Seven amendments were adopted in 1877 extending the right of suffrage to negroes; prescribing the residential qualifications of electors; authorizing the General Assembly to enact a registration law; fixing the date of holding general elections on the Tuesday after the first Monday in November; authorizing the General Assembly to provide for special township and judicial elections; providing that the enumeration of voters should be based on the number of males, instead of white males, over twenty-one years of age; authorizing the grading of the compensation of public officers in proportion to the population and the necessary services required; altering the judicial system and making possible the creation of additional superior courts; increasing the membership of the Supreme Court; and striking out the negro disability and colonization article. These amendments were readopted in 1879 and were submitted to the electors by an act approved March 10, at the spring elections held on April 5. On April 28, in conformity with a provision of the law, the Governor issued his proclamation declaring the vote cast on the several amendments.<sup>58</sup> The Governor was given no authority to declare the amendments in force and no such proclamation was issued. It was generally understood, however, that the Governor's official

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58. Secretary of State's Report, 1880, 96.

announcement of the vote cast was equivalent to a declaration of adoption. The total number of votes cast at the April election of 1880 for township officers was 380,771; the total number of electors in the State according to the official enumeration taken in 1877 was 451,028; and the total vote cast for Governor in 1876 was 434,006. The affirmative vote on the seven propositions submitted ranged from 169,000 to 181,000, and there were more votes cast for each amendment than against it, the majority in each case ranging from 17,000 to 49,000. A majority of the whole number of votes cast at the April election was 190,236; a majority of the whole number of electors of the State according to the official enumeration of 1877 was 225,515; and a majority of the votes cast for Governor in 1876 was 217,004. Obviously, none of the seven amendments had obtained a majority of the votes cast at the election, and the question arose at once whether the amendments had been adopted and led finally to the first judicial construction of the amendatory provision of the Constitution.

Two theories were advanced to interpret the amendatory provision of the constitution. According to one theory if an amendment received a majority of the votes cast on the proposition, it was adopted, regardless of whether the affirmative votes so cast constituted a majority of the whole number of votes cast at the election. The alternative theory held that an amendment to be adopted must receive a majority of the whole number of votes cast at the election at which it was submitted. Of the seven amendments in question, several were self-executing and others required statute law to carry them into effect. Of the self-executing amendments, the one prescribing the residential qualifications of electors was speedily put to a test. The municipal elections were held on May 4, 1880, and the press announced that no person would be allowed to vote at the ensuing elections who did not possess the residence qualifications as prescribed by the suffrage amendment. A test case was instituted in New Albany and was elucidated and decided at the May term of the Supreme Court. This case, which is known as *The State v. Swift*, held that the seven amendments had not been adopted and laid down the following principles of law: a proposed amendment of the Constitution, to become a part of the Constitution, must be ratified by the votes of a majority of the electors of the State; the General Assembly may provide that the whole number of votes cast at the election at which an amendment is submitted may be taken as the whole



number of electors of the State at that time; the amendments submitted in 1880 were neither ratified nor rejected; hence they were still pending, and without readoption might be submitted to the electors again.<sup>59</sup>

In his message to the General Assembly on January 8, 1881, Governor Gray reviewed the points decided in the Swift case and urged the General Assembly to re-submit the amendments at a special election or formally withdraw them from consideration.<sup>60</sup> In his inaugural address of January 10, 1881, the in-coming Governor, Albert G. Porter, urged the General Assembly to re-submit the amendments in conformity with the recent decision of the Supreme Court.<sup>61</sup> Accordingly, by an act approved on February 21, 1881, the General Assembly re-submitted the seven pending amendments to the electors at a special election held on March 14, 1881.<sup>62</sup> On March 24, 1881, Governor Porter issued his proclamation announcing the vote cast on each amendment and declared them in force.<sup>63</sup>

At the session of 1897 two amendments were adopted, fixing the membership of the Supreme Court at not less than five nor more than seven members, and authorizing the General Assembly to prescribe the academic qualifications necessary to practice law. At the session of 1899, these two amendments were re-adopted and by an act approved March 6, 1899, they were submitted to the electors to be voted on at the general election of 1900.<sup>64</sup> At the general election held on November 6, 1900, the total vote cast for presidential electors was 664,094; and the total vote for Governor was 655,965. Of the two amendments submitted, the lawyer amendment received 240,031 affirmative votes and 144,072 negative votes; the Supreme Court amendment received 314,710 affirmative votes and 178,960 negative votes. On November 30, 1900, the Governor issued his proclamation declaring the vote cast on the two amendments but did not state whether they had been adopted or rejected. At the November term, 1900, the Supreme Court for a second time was called upon to interpret the amendatory provision of the Constitution which they did in the case called, *In re Denny*. In this case the court

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59. 69 Ind. 505.

60. House Journal, 52nd Session, 36.

61. *Ibid.*, 81.

62. Laws, 52nd Session, 29; Secretary of State's Report, 1881, 148.

63. Secretary of State's Report, 1881, 153.

64. Laws, 61st Session, 560.

held, as did the Swift case, that a majority of all the electors voting at the election at which the amendment was submitted was necessary to ratify; as neither amendment had received a majority of the votes cast at the election they were not adopted but were definitely defeated and rejected.<sup>65</sup>

In 1906, the lawyer amendment was again submitted to the electors and again failed for want of a constitutional majority. In 1910 the amendment was submitted a third time and lost. In 1913, when it was determined to submit other amendments to the electors, it became necessary to clear the legislative path of all constitutional obstructions. The lawyer amendment, as has been shown, had been thrice submitted, and, as it had not received a majority of affirmative votes cast at the election at which it was submitted, a belief existed that it was still pending and was, therefore obstructive of the submission of other amendments. As the General Assembly had the authority to propose constitutional amendments, they likewise had the authority to withdraw an amendment once proposed from consideration. Although this action had never been taken, it was proposed by Governor Gray in his message of January 8, 1881, when commenting on the scope and effect of the Swift case. In that message he urged the General Assembly either to take the sense of the electors on the adoption or rejection of the proposed amendments or "to declare that the amendments proposed have ceased to be living issues before the people, and are no longer 'awaiting the action of a succeeding General Assembly or of the electors.'"<sup>66</sup> The first actual attempt to withdraw an amendment from further consideration by the people was made in 1913. On January 10th of that year Senator Stotsenburg introduced a resolution setting forth that the lawyer amendment had been submitted to the people; that the amendment was neither adopted nor rejected by the electors; and that some doubt existed whether or not the amendment was still pending before the people. He, therefore, proposed that the amendment be formally withdrawn from further consideration by the people. The resolution passed the Senate on February 21 by a vote of 38-0; was received by the House on February 24 and submitted to the Judiciary Committee on February 27.<sup>67</sup>

Meantime, the Supreme Court had been called upon a third

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65. 156 Ind. 104.

66. House Journal, 52nd Session, 36.

67. Senate Journal, 68th Session, 1112.

time to interpret the amendatory provision of the Constitution and to determine the status of the lawyer amendment which had failed of adoption for a third time in 1910. In a decision in the case known as *In re Boswell*, handed down on February 21, 1913, the court held that it requires an affirmative majority of the votes cast at the election at which the amendment was submitted to insure its adoption; as the lawyer amendment had not received a majority of the votes cast at the election at which it was submitted it was not adopted; the constitutional duty of the General Assembly is discharged when there has been one submission of an amendment, the constitutional provision does not specifically require a resubmission; if the General Assembly has the power to re-submit an amendment, it is an implied power. "If it has this implied power, it is difficult to see why it has not also the implied power to refuse to resubmit or even to withdraw amendments from further consideration. There is nothing to indicate an intention to require resubmission over and over again until definite action is secured by ratification or positive rejection by a majority against the amendment.'" The lawyer amendment was not only not ratified but was defeated and rejected.<sup>68</sup>

It will be observed that this decision was handed down on the same day that the resolution withdrawing the lawyer amendment from consideration was adopted by the Senate; as this decision definitely removed the lawyer amendment from consideration the adoption of the resolution by the House was rendered unnecessary. Thereafter the Stotsenburg amendments were adopted, but as they were defeated in the General Assembly in 1915, no amendments are now pending and the scope and meaning of the amendatory provision as interpreted in the *Swift*, *Denny* and *Boswell* cases are reasonably clear.

**Calling a Constitutional Convention.**—The present Constitution contains no provision relative to the calling of a constitutional convention as did the Constitution of 1816, but "the people of a State may form an original constitution, or abrogate an old one and form a new one, at any time, without any political restriction except the Constitution of the United States" (*Collier v. Frier-son*, 24 Ala. 100, cited with approval in *State v. Swift*, 69 Ind. 518). By Section 17 of Article VII, the General Assembly is authorized to effect an amendment of the Constitution by the power conferred upon it to "modify or abolish the grand jury

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68. 179 Ind. 292.



system.” By Article XVI, a method is provided for securing amendments to the Constitution by a legislative process, whereby an amendment which has been adopted by a majority vote of each house of two succeeding General Assemblies and ratified by a majority of the electors voting at the election at which the amendment is submitted becomes a part of the Constitution. In 1913 an attempt was made by the General Assembly to frame a new constitution and submit it to the people for ratification, but in the case of *Ellingham v. Dye* the Supreme Court held that the General Assembly had exceeded its authority and the instrument was declared null and void.

During the sixty-five years which have elapsed since the adoption of the present Constitution many attempts have been made by members of the General Assembly to secure the adoption of a law providing for the submission to the people of the question of calling a constitutional convention; many causes have conspired to defeat these projects and it has thus happened that the proposition has been submitted to the electors on only two occasions, in 1859 and 1914, and in both cases the proposition was rejected by rather decisive majorities.

The Constitution of 1851 was considered as the handiwork of the Democrats since that party commanded a large majority in the Convention. This sentiment is clearly in evidence from the tenor of an editorial comment of the *Indianapolis Journal (Whig)* on March 7, 1853. “In this State a convention to amend the Constitution was held. The Democrats had a large majority. They could do just as they pleased.” Several provisions of the new Constitution aroused wide-spread adverse criticism. This dissatisfaction was partly the result of partisan jealousy, partly the unsatisfactory character of the provisions, and partly the difficulty of effecting a social, political and economic readjustment to comply with the requirements of the new instrument of government. So long as the Democrats remained in power no attempt was made to effect any changes in the Constitution; when the Republicans came into power in 1855 several amendments were proposed and defeated; nothing was accomplished in 1857, and the special session of 1858 adjourned after trying unsuccessfully to secure changes in the Constitution by the use of the amending device provided therein. The two most pressing questions were those affecting suffrage and common schools. Aliens were permitted to vote after residing in the State six months and no law, under the existing provisions of the Constitution, could be

enacted prescribing a period of residence in the township or precinct. This condition fostered widespread election frauds. Under a Supreme Court interpretation of the common school provision of the Constitution, the General Assembly was prohibited from authorizing local school authorities to levy supplementary school taxes for the support of common schools after the State tax was exhausted. The fact that the two houses of the General Assembly were of opposite political faith in 1855 prevented the adoption of an amendment correcting the qualifications for suffrage. In 1857 an amendment passed the House but was never acted upon by the Senate where the party division was very close. The failure to secure amendments promptly led some observers to conclude that the amendatory provision of the Constitution was unworkable. On December 18, 1858, during the special session, when several abortive attempts had been made to secure amendments, the Indianapolis Journal, in an editorial comment said: "The most ridiculous and impracticable feature of our present Constitution" is the method of proposing amendments. They advocated the calling of a constitutional convention, which they insisted could "meet and make a new constitution and adjourn in three weeks, with little cost to the State and infinite profit. The present legislature should pass a law calling a constitutional convention next summer, so that at the fall election the people may ratify or reject their work."

This suggestion was not adopted at the special session but at the ensuing regular session a law was passed submitting the question of calling a convention and at the ensuing election was decisively defeated.

On January 10, 1859, Mr. Davis<sup>69</sup> introduced a bill<sup>70</sup> to provide for taking the sense of the qualified voters of the State on the question of calling a constitutional convention to alter, amend or revise the Constitution of the State.<sup>71</sup> On January 11, the bill was referred to the Committee on Judiciary.<sup>72</sup> On January 27, the committee reported an entirely new bill and recommended its passage.<sup>73</sup> With the following exceptions this bill was exactly in the form in which it finally passed: (1) The bill provided for holding the election to determine whether a convention should be held

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69. Republican of Floyd Co.

70. H. B. No. 1.

71. House Journal, 1859, p. 34; Brevier Reports, p. 14.

72. House Journal, p. 61; Brevier Reports, p. 25. Committee consisted of 6 Republicans and 1 Democrat.

73. House Journal, p. 246 where bill is given in full.

at the annual election in April, 1859; it was amended to provide for holding the election at the annual election in October, 1859. (2) The bill provided for holding the election to select delegates on the second Tuesday of October, 1859; it was amended to provide for the selection of delegates on the first Monday of April, 1860. (3) The bill fixed the date of the assembling of the convention on the second Tuesday in November, 1859; it was amended to provide for the assembling of the convention on the second Tuesday in May, 1860. (4) The bill provided that the Convention should consist of fifty delegates, one to be elected from each senatorial district, who must be residents thereof at the time of their election; it was amended to provide that the Convention should consist of one hundred delegates, apportioned among the several counties of the State in the same way that the members of the House of Representatives were apportioned.<sup>74</sup>

The debate on the composition of the convention was not very animated and there was a general disposition to compromise. Three plans were proposed:

The plan recommended by the Judiciary Committee was the Republican plan, as six of the seven members of that committee were Republicans, among which was Mr. Davis, the author of the bill. It provided for a membership of fifty delegates, one to be elected from each senatorial district. It was argued that a convention of one hundred and fifty members was too large and unwieldy and would be too expensive; while a convention of fifty delegates was sufficiently representative and more economical, and would agree on important propositions more expeditiously, though as Speaker Gordon said, "so restricted a number might cut off many of us small fry politicians, but in this he was willing to resign his claims to worthier hands." The sentiment against 150 members, the number of delegates in the Convention of 1851, seems to have been unanimous. The proposition for fifty members was supported in the main by the Republican representatives, the chief arguments being made by Mr. Davis, the author of the bill, and Speaker Gordon. Gordon attempted to show that grave inequalities would result from giving one delegate to each senatorial district.

A second plan was proposed by Mr. Shull for one hundred delegates. Mr. Shull, a Democrat, wished a large representation and proposed to amend the bill so as to provide for one hundred dele-

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74. Laws, 1859, p. 97.



gates, one to be selected from each representative district. While most of the Democrats opposed the measure, they preferred this provision in the event that the bill should pass and it was the amendment which ultimately prevailed. Shull argued that the expense of the convention should not be considered and fifty members was entirely too few and not sufficiently representative. Mr. Dougherty favored a large representation for "in a multitude of counsellors there is safety," and Mr. Dobbins was of like opinion.

The third plan was proposed by Mr. Hunter and provided for thirteen delegates. Mr. Hunter thought the convention should consist of thirteen delegates; one from each congressional district and two from the State at large. He defended his amendment on the grounds of economy. This proposition met with little favor. It was opposed by both Democrats and Republicans for the reason that it was not sufficiently representative, that it would result in a one man power and that the saving of money was an unworthy consideration.

The further discussion of these propositions was postponed until January 28.<sup>75</sup> At that time the argument turned largely on other matters. A motion to indefinitely postpone the consideration of the measure was lost by a vote of 47-30.<sup>76</sup> On February 8, the bill was taken up for consideration again,<sup>77</sup> and on motion of Mr. Davis it was referred to a select committee of five. At this juncture Mr. Hamilton of Boone obtained leave to introduce a preamble and resolution, setting forth that many provisions of the Constitution were defective, rendering legislation under it difficult, tedious and in some respects impossible and at least inadequate to the emergencies of the times and the wants of the citizens and restricting remedies which would tend to the public good; and resolving that a committee of one from each congressional district be appointed to draw up and report such amendments to the House as seemed needful and advisable.

These resolutions were agreed to and Mr. Davis withdrew his motion to commit the bill to a select committee in favor of a committee of one from each congressional district.<sup>78</sup>

On February 10, this committee reported certain amend-

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75. House Journal, 250.

76. House Journal, 272; Brevier Report, p. 98.

77. Agreed on January 31 to make the bill the special order for February 3 postponed to February 8, House Journal, 287, 363; Brevier Report, p. 107, 128.

78. House Journal, 436 and Brevier Report 151. This committee consisted of 8 Republicans and 3 Democrats.

ments which were adopted and which changed the bill to precisely the form in which it passed. Dougherty said there were several members of the committee who disagreed with the report and were opposed to the passage of the bill.<sup>79</sup> On February 21, the bill failed of passage for want of a constitutional majority, the vote being 47-39.<sup>80</sup> Two days later, on February 23, the bill was again put upon its final passage and passed by a vote of 56-34.<sup>81</sup>

The discussion of the bill began on January 27 and was resumed on January 28. At the close of the debate on the second day an attempt was made to indefinitely postpone the bill and the relative strength of the advocates and the opponents of the measure was fairly disclosed. There were thirty votes in favor of indefinite postponement and forty-seven opposed. The significance of this vote was clearly comprehended by the opposition and the *Sentinel* in an editorial on the following day remarked that the "test vote" in the House "indicated a determination to essentially change or modify the present organic law of the State."<sup>82</sup>

The important points about which the contest was waged were the following:

(1) Was there a popular demand for a revision or amendment of the Constitution?

(2) If there were unmistakable and acknowledged symptoms of such a demand in what way should the amendment or revision be undertaken? Two radically different methods were advocated. (a) The sponsors and proponents of the bill were committed to the plan of calling a constitutional convention. This was probably the more democratic of the two and involved the additional question as to whether the legislature was willing to submit the proposition to the people for their decision. (b) The opponents of the bill favored the plan of legislative amendment and insisted that the Constitution provided for its own amendment.

(3) What were the most obvious defects of the Constitution which called for peremptory revision or amendment?

(4) Incidentally, considerable partisan feeling was displayed during the debates, and when the passage of the bill was assured, a controversy over its provisions arose.

Was there a popular demand for a revision or amendment of the Constitution? The opinions of the representatives on this sub-

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79. House Journal, 483 and Brevier Report, 165.

80. House Journal, 696 and Brevier Report, 226.

81. House Journal, 752 and Brevier Report, 239.

82. *Sentinel* January 29, 1859.

ject were unevenly divided. Of the members who participated in the discussion of this question, by far the larger number admitted the demand for a revision, and even those who objected to the proposed plan of amendment admitted that the Constitution was seriously defective. The speeches of eleven representatives have been preserved. Of these, five Republicans<sup>83</sup> and two Democrats<sup>84</sup> insisted that the Constitution was sadly in need of amendment and that a popular demand for an immediate revision existed. They did not all agree as to the method of amendment. Three Democrats<sup>85</sup> and one Republican<sup>86</sup> argued that no popular demand for revision existed. Mr. Davis, the author of the bill felt assured that a majority of the people "desired to get rid of the rickety Constitution under which we now live" and he regarded that instrument as being so defective that he assured the House that he would "strike the whole thing out if he could get a whack at it." He did not think Floyd county would cast three hundred votes against the proposition. The "present rickety concern" ran too minutely into legislation, and the large number of propositions which had been submitted every session to secure amendments to the Constitution was convincing proof that the people were dissatisfied with it. The proponents of the measure assured the House that the matter had been widely discussed by the people. There were too many conflicting decisions under the present Constitution; even the Constitution itself was self-contradictory, it was a "legal hotch-potch", and the people were in continual anxiety as to their constitutional rights; this was especially true in regard to the common schools and the temperance question. The people wanted a plain, simple Constitution not open to adverse construction. They defended the right of peaceable revolution and insisted that such a contingency had now arisen.

The opponents of the bill thought that there had been no concrete expression of sentiment from legitimate and unprejudiced sources. No petition had been presented to the House; the press had demanded it in only a few instances; and it had not been demanded by either of the two leading political parties. The Constitution was not "rickety"; nor had it been "adopted by the convention and ratified by the people without reflection." The chief advocates for a new Constitution throughout the State

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83. Hunter, Davis, Gordon, Mellett and Hamilton of Boone.

84. Kempf, a foreigner of German extraction, and Gifford.

85. Dougherty, Jordon and Dobbins.

86. Baird.



were those around the capital and “a few interested hotel keepers”; those persons who desired to exclude foreign born citizens from the polls, an unworthy sentiment which had no place but “in the hearts of the lingering, unlamented remains of the Know-Nothing party”; but “even the fanaticism of Know Nothingism—did not venture to lay hands upon it for amendment” in 1855; the “Maine Law faction” was clamoring for amendment as was announced in the late State Temperance Convention; “the peculiar ‘friends of freedom’ also desire it—to give them a fresh opportunity to clamor for the rights of the black race;” the “graver reason” was in “the alleged conflicting provisions of legislation and court decisions,” under the present Constitution, which was more the fault of the legislature than the Constitution. They advised reflection and did not think the people were disposed “to tear up their Constitution every seven years,” and deprecated the disposition to change their organic law, even though it was full of objections and discrepancies. All of the members, regardless of party, expressed their entire willingness to submit the proposition to the people, their acknowledged sovereigns and where ultimate power resided.

The opposition to some form of constitutional amendment was negligible. But those members who opposed the calling of a convention advocated the adoption of amendments in the manner prescribed by the Constitution, by two successive legislatures, and their ultimate submission to the people for ratification or rejection. Gifford, Dougherty, Jordon, Hamilton of Boone and Baird regarded the method of amendment by the legislature as the more satisfactory, fully ample, safer and more economical. It was likewise fully as expeditious. Before resorting to the method of calling a convention, the constitutional mode should be tested. In this way propositions could be presented singly and they would be clearer and less confused and could be canvassed before the people by candidates for the legislature. They even went so far as to assert that the provision of the Constitution relative to legislative amendment was binding. To these arguments the Republicans, Davis and Jordon, replied that if that provision was binding they were still under the old Constitution; that legislative amendments had rarely if ever succeeded; that revision by this method was utterly “impracticable”; that much time was required for a single modification and that “competition for priority” had defeated every proposition ever presented. “Did the

convention wish to eternize its work?" If there was no other reason for calling a convention this was a good one.

In the course of the discussion, several important amendments to the Constitution were suggested, of which the following were most frequently emphasized:

All of the members with scarcely a single exception admitted the inadequacy of the common school system which had been dealt a staggering blow by a recent decision of the Supreme Court. The system built up under the old Constitution and continued under the present one was admittedly better. They objected to the "iron bedstead uniformity" of the provision of the Constitution requiring a uniform expenditure of revenue. "Nothing could be done anywhere in the State in advance of the progress of the darker portions." They would have the "tallest lead, and let those who were willing close the files of progress."

The Constitution should be so amended as to enable the legislature to pass a registration law and a law to safe-guard the ballot box. The present system admitted "whole shoals of emigrant voters for want of the constitutional power to fix some time to constitute a residence." The bill was designed, said Kempf, to make the law correspond with "the good old Jeffersonian doctrine, as it exists in the naturalization laws of the country."

Considerable sentiment was expressed for a change from biennial to annual sessions of the legislature.

According to a recent court decision, the Constitution required that when a law is amended, the section to be amended and the section as amended shall be set out in full. Many laws had been declared unconstitutional for violation of this provision. Davis and Jordan objected to this method, swelling the acts to "four times the size of all the Gospels" and the Journals "beyond all reasonable bounds," besides the cost of printing was appreciably increased. Of the 155 acts passed in 1853, forty-two chapters were unconstitutional for violation of this constitutional provision alone.

In many respects the system of special legislation in vogue under the old Constitution had worked well and the present system of general and uniform laws was cumbersome, and many members desired a change to the old system in a modified form.

Some objection was raised to the provision requiring the treatment of but one subject in a bill.

Mr. Davis opposed the provision requiring a bill to be read three times.

Under the Constitution, all common pleas judges received a

salary of \$800.00. By this provision, these judges had been given \$40,000.00 per year more than was intended.

Speaker Gordon contended that the constitutional provision for the apportionment of representatives was defective and by reason of that fact no legislature had been legally convened since 1855.

A constitutional change was likewise desired to effect an amelioration in behalf of temperance.

The bill was preeminently a Republican measure and the large majority of the Democrats arrayed themselves solidly against it. The Americans were favorably disposed because of the naturalization question. Jordan said he "could hardly regard this as any better than a mere interested partizan movement against the Democratic party." Baird considered it a shrewd scheme on the part of adroit and calculating politicians to attract the support of the temperance and hard money people. The Republicans denied that there was any "bantling of political partisanship," and asked whether every friend of the bill was supposed to be hostile to foreign born citizens and were contriving to use those citizens for political purposes.<sup>87</sup>

Politically the Senate was evenly divided. There were twenty-five Republicans, three Anti-Lecompton Democrats and twenty-two Old Line Democrats, but the passage of the bill seemed assured from the start. It was reported to the Senate on February 26<sup>88</sup> and read a second time two days later on February 28. Mr. Heffren tried unsuccessfully to have the bill referred to the Judiciary Committee. The motion was lost by a vote of 14-20. Two other amendments which he proposed were lost. The first provided for the election of delegates on the first Monday of June instead of the first Monday of April, 1860. He then tried to secure the adoption of an amendment to provide for the selection of delegates at the general election in October, 1860. The effect of these two amendments would have been to postpone the date of assembling of the Convention.<sup>89</sup> Beeson, a Republican from Wayne county, expressed the belief that the Constitution could not be bettered. The last convention struck from the old Constitution two-thirds of its virtues and the next convention will strike

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87. For discussion of the bill see Brevier Report, pp. 89-90, 98.

88. Senate Journal, p. 774 and Brevier Report, p. 258.

89. The members who spoke in favor of the bill were Gooding, Bennett, Green, Murray, Wagner and Bobbs, all Republicans but Gooding; those who opposed were Hamilton, Beeson, Cobb, Heffren, Johnston and March, all Democrats but March, and Beeson, Senate Journal, p. 789, Brevier Report, 260.



out the remaining third and then we shall have a Constitution "in accordance with the age in which we live."<sup>90</sup> Cobb thought the bill was unconstitutional. The Constitution could only be amended in the way the instrument prescribes, it is a compact made between the people of the State and alterable only by the terms of the compact, "a self-perpetuating document to be changed by the legislature with the approval of the people." On March 4, by a vote of 25-21, the bill was taken up and passed, the vote on final passage being 30-17. Mr. March, who had consistently opposed the bill, voted aye "upon the popular sovereignty principle."<sup>91</sup> The Governor signed the bill on March 5.<sup>92</sup>

The act provided for taking the sense of the qualified electors of the State on the question of calling a Constitutional Convention at the annual election in October, 1859. If a majority of the voters voted in the affirmative, an election of delegates was to be held on the first Monday of April, 1860. Each of the one hundred representative districts was entitled to one delegate. The Convention was to assemble in Indianapolis on the second Tuesday of May, 1860. Each delegate was to receive \$3.00 per day and the same mileage as members of the General Assembly. Proposed amendments were to be submitted separately or together as the Convention should determine. The Constitution as ratified by the people was to be laid before the next succeeding General Assembly, and they were required to enact the necessary laws to carry it into effect.<sup>93</sup>

The fortieth session of the General Assembly was adjourned on March 7, 1859. The only election to be held in October was for county officers and this attracted rather slight attention. It was quite remarkable how little the question of calling a constitutional convention was discussed. The defeat of the proposition was abundantly assured from the start. It was not discussed from the stump and the papers were indifferent in their support or condemnation of the proposition.

Of the prominent party papers published in the State in 1859, the following were in favor of calling a convention: The Indianapolis Daily Journal, The New Albany Daily Tribune,

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90. Sentinel, March 5, 1859.

91. Senate Journal, p. 974 and Brevier Reports p. 292.

92. House Journal, p. 1112 and Senate Journal, p. 1049. The House was informed of the passage of the bill by the Senate on March 5th, House Journal, 1105. The President of the Senate signed the bill on March 5th, Senate Journal, 1055.

93. Laws, 1859, p. 97.

The Vincennes Gazette, The Fort Wayne Times, the St. Joseph County Register, The South Bend Register, The Evansville Journal, The Indiana American, The Richmond Palladium, The New Castle Courier, The St. Joseph Valley Register, The Rising Sun Visitor, The Shelbyville Banner, The Spencer County Democrat, all of which were apparently classed as Republican or Opposition papers. In addition was The St. Joseph County Forum "the leading Democratic paper of the Ninth District." The two ablest, most representative and persistent advocates were the Indianapolis Journal and the New Albany Tribune, staunch adherents, both, of the Republican doctrines. But the Journal only carried fifteen editorials on the subject,<sup>94</sup> or an average of one every two weeks, and the Tribune carried only eight.<sup>95</sup>

The following party papers opposed the calling of a constitutional convention: The Indianapolis Daily Sentinel, The New Albany Daily Ledger, The Lawrenceburg Register, The Evansville Enquirer, The Bedford Press, The Miami County Sentinel, The Boone County Pioneer, The Richmond Jeffersonian, The Fort Wayne Sentinel, The Princeton Clarion, The Pulaski Democrat and The Jay County Democrat, all apparently Democratic papers. To these should be added The Terre Haute Express, an Opposition paper, which insisted on amendments but opposed the call of a convention; The Centerville True Republican, which assumed a similar attitude; The Parke County Republican, which favored the legislative method of amendment but would listen to argument; The Rockville Republican and the Wabash Express, "an ultra Opposition paper." Of these papers, the Indianapolis Sentinel and the New Albany Ledger were the most influential; but the Sentinel expended most of its editorial efforts in attempting to answer the Journal and during the entire campaign they ran only fourteen editorials and only two of these appeared before the latter part of the summer.<sup>96</sup> The Ledger ran only nine editorials.<sup>97</sup> The Princeton Clarion had only two.<sup>98</sup>

In spite of the universally acknowledged defects of the Con-

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94. March 8th, April 15th, August 2d, 11th, 17th, 19th, 20th, 24th, 26th, 27th, 29th and 30th and September 8th, 9th and 12th.

95. April 9th, May 4th, July 21st and 23d, August 19th, September 16th and 17th and October 10th.

96. January 29th, February 17th, August 2d, 16th, 19th, 20th, 22nd, 25th, 27th, 29th, 30th and 31st, September 13th and October 13th.

97. March 24th, July 19th, 21st, 27th, and 29th, September 1st, 15th, and 17th and October 4th.

98. August 27th and September 3d.

stitution, and the many attempts which had been made to secure amendments, the question of calling a convention aroused very little interest or enthusiasm. Its defeat seemed to be a foregone conclusion. Expressions of sentiment are almost entirely wanting until the middle of the summer. About the first of August, the Richmond Palladium admitted that "but little has been said by the press or people in this section of the State in reference to the vote for calling a convention to revise the Constitution."<sup>99</sup> Two weeks earlier, the Evansville Journal, one of the representative Republican papers of the southern part of the State said that there was "an ominous silence among the press and politicians of the State" in regard to the convention, and they concluded that they were "wary in committing themselves."<sup>1</sup> Even as late as September 10, only four weeks before the election, The Centerville True Republican, a staunch Opposition paper, observed that this question had "attracted but little attention" and it was generally conceded that the call for a convention would be overwhelmingly defeated.<sup>2</sup> On July 21, the New Albany Tribune said the question of calling a convention was "almost forgotten" and the subject had scarcely been mentioned for a month. On August 19, they said the question was being discussed more.

Contrary to the wishes of the Republicans the convention question became more or less of a party issue. The Republicans, as we have seen, religiously refrained from mentioning the subject in their county resolutions, while the Democrats had in many cases passed strong resolutions. The Opposition charged the Democratic press with making a party issue of the question.<sup>3</sup> The St. Joseph Valley Register said the Republican county conventions had refused to adopt resolutions on this question because they did not want the people to divide politically on it.<sup>4</sup> The first proposition to amend the Constitution during the preceding session of the General Assembly was by a Democrat; the second by an American; and the third and successful one by an "old Whig." The Republicans generally supported the measure and the Americans without exception. There is "rarely seen a measure so intimately associated with party records and prospects, so entirely loosed from party advocacy or resistance" as

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99. Quoted in N. A. Tribune, August 2nd.

1. Quoted in N. A. Tribune, July 19th.

2. Quoted in Sentinel, September 10th.

3. N. A. Tribune April 9th, July 21st, August 19th, Journal April 15th, August 2nd; New Castle Courier quoted in N. A. Tribune August 8th.

4. Quoted in N. A. Tribune September 6th.



this one. As the debate dragged on, the Democrats saw “something of party advantage in opposing it.” After its adoption, they seem to have “compacted their resistance” and resolved to “fight it as a party question exclusively.” The attitude of the press and the county conventions was “adopted solely from party considerations.” For just as the first proposition was by a Democrat, so “the first untrained expressions” of the Democrats showed the popular feeling. “It took party discipline to check even Democratic approval of the measure,” and adopting the attitude of “making it a party question, and complicating the interests of education and the wants of Indiana with partisan purposes and feelings.” This was the diagnosis of the case by the Indianapolis Journal on August 2nd. The observation of the Bedford Press that the Democrats generally were opposing the convention and that its advocates were not promoting it assiduously was probably very near the truth.<sup>5</sup>

Both the Democratic and Republican press were diligent and unsparing in their analysis of the reasons for calling or refusing to call a convention. The Republicans said the reasons the Democrats so strenuously opposed the proposition were that they feared they would have a bare majority in the convention and that “some objectionable features of the present Constitution, which were inserted for party purposes, would be in danger of expurgation.”<sup>6</sup> The New Castle Courier thought that although the Democrats were nominally opposing the Convention because of the expense, “the secret of their opposition is the fear that the Republicans will control it.”<sup>7</sup>

The Democratic press professed to believe that the proponents of the convention were actuated by sinister and meretricious motives, and were endeavoring to call a convention “to accomplish objects of their own, and to advance their own individual interests.” “There is a cat covered up in this convention meal tub . . . ,” said the New Albany Ledger on July 21, “and we would advise the people to keep a good look-out for the animal.” Those interested in getting up the convention “are gentlemen connected with moneyed corporations—a class of institutions which are debarred by the present Constitution from receiving any special favor from the legislature.” The author of the bill was the “President and a large stockholder in a banking insti-

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5. Cited in Sentinel, August 6th.

6. N. A. Tribune, July 21st.

7. Quoted in N. A. Tribune, August 8th.

tution in this city.” Hamilton Smith of Perry county, who had offered to take the stump in favor of the proposition, “is President of a wealthy and extensive corporation at Cannelton.”<sup>8</sup> On September 15, the same paper said: Those interested in the call of a convention are the corporation interests who want the wholesome restrictions of the Constitution removed in order that they may “secure special favors from corrupt or susceptible legislators.” The politicians, the Miami County Sentinel said on March 16, were opposed to the Constitution because it had abridged the field of their operations, which might be enlarged by a new Constitution.<sup>9</sup> It is “a scheme of politicians and speculators to advance their own interests at the expense of the public,” said the Pulaski County Democrat.<sup>10</sup> The political manipulators “who want judgeships bartered as the necessities of needy politicians may demand,” were also tireless in their advocacy.<sup>11</sup> The Opposition leaders were likewise using this as a means to “advance the interests of party.”<sup>12</sup> Moreover, the Constitution had so often proved a stumbling block in the way of that class who “make politics a trade” and had destroyed their trade by cutting off local business.<sup>13</sup> Changes would also probably be incorporated in a new constitution to create new offices and afford more extensive plunder.<sup>14</sup> The project was also to be used by “numerous aspiring and self-sufficing politicians—to immortalize themselves in Constitution making.”<sup>15</sup> The New Albany Ledger summed up all these villainies in a sentence by pronouncing the proposal to call a convention “an effort—on the part of the restless and small potato politicians to tinker with the organic laws of the State, and provide offices which they hope to fill.”<sup>16</sup> The argument of “evil designing persons” using the convention as a “cats-paw to accomplish purposes of their own” was dismissed by the propagandists as mere political gasconade.<sup>17</sup>

Aside from these alleged Machiavellian tactics of unscrupulous and calculating politicians, there were the zealous and misguided

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8. N. A. Ledger, July 29th.

9. Quoted in Sentinel, March 14th.

10. Quoted in Sentinel, September 23d.

11. N. A. Ledger, September 15th.

12. Sentinel, August 20th.

13. Miami Co. Sentinel. Quoted in Sentinel, March 14th.

14. Boone Co. Pioneer. Quoted in Sentinel, March 16th.

15. Fort Wayne Sentinel. Quoted in Sentinel, March 23d. See, also, Miami Co. Sentinel. Quoted in Sentinel, March 14th.

16. Quoted in Sentinel, March 24th.

17. N. A. Tribune, July 23d.

fanatics who hoped to incorporate their chauvenistic and half-baked political theories into the fundamental instrument of government. There was a "restless spirit abroad for change" and "scheming politicians and visionary theorists in the science of government"<sup>18</sup> were "endeavoring to humbug the people into calling a convention"<sup>19</sup> simply "to gratify a set of visionary theorists who are under the serious, but mistaken, impression, that wisdom will die with the."<sup>20</sup> It was the "pet measure of the opposition"—Black Republicans, Know Nothings and Maine Lawites, abolitionists and the grumblers generally; it was a "scheme of trading politicians and impractical reformers to get rid of a Constitution which prohibits class legislation and stands in the way of—ismites generally."<sup>21</sup> It was "mischievous and uncalled for."<sup>22</sup> The Constitution had always stood as a "reliable break-water to the flood of fanaticism" and had frustrated the sincere but misguided designs of the "extremists and one-ideaists" who "are generally bigoted, illiberal and intolerant."<sup>23</sup>

On September 15, the New Albany Ledger gave a classified list of all persons who were interested in the call of a convention. The list included the following classes: The corporation interests who do not believe in wholesome restrictions and individual responsibility; the Know Nothings who want an amendment like that of Massachusetts; the Maine Law men who want an express provision to authorize the passage of a prohibitory law; the Abolitionists who do not believe in preventing negroes from coming into the State; those who want to take from the people the right of electing their judges and give the power into the hands of the Governor and legislature to be bartered off as the necessities of need or seedy politicians may seem to demand; those who want to see the restrictions against local legislation removed, in order that certain institutions, companies and individuals may be able to secure special favors from corrupt or susceptible legislators; and the grumblers generally.

Two days later, on September 17, the New Albany Tribune replied by submitting a similar list embodying their own ideas. Those who were in favor of a convention included: The friends of free schools; those who desire purity in elections; those who

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18. Sentinel, August 20th.

19. N. A. Ledger. Quoted in Sentinel, August 2nd.

20. Sentinel, September 13th.

21. N. A. Ledger, July 19th and September 15th.

22. Fort Wayne Sentinel. Quoted in Sentinel, March 23d.

23. Miami Co. Sentinel. Quoted in Sentinel, March 14th.



desire justice and equality in taxation; those who oppose drunkenness and crime; those who are not in favor of taxing the people of one county for the educational purposes of other counties, under the plea of uniformity; those who oppose the system of plunder which exists under our present Constitution; those in favor of good money and opposed to wild cat banks; those in favor of justice in the granting of licenses and permits; those who favor economy in the administration of our government; those who favor honest and just legislation; those in favor of permitting the people to tax themselves, if they see fit, in order to school the poor children around them; those who wish to perpetuate free institutions. Among those opposed were: Public plunderers and demagogues; aliens who desire to interfere with our institutions, make and control public opinion, and hold office without first being naturalized; all who are in favor of cheating at elections and stuffing the ballot box; all who are opposed to common schools; all who desire the poor man to pay the same amount of taxes the rich man pays; all who are in favor of rotten corporations, wild cat and owl creek banks; and those who favor drunkenness and crime.

Practically all people in the State in 1859 were unanimous in their conviction that the Constitution was in need of amendment, at least in some particulars. On January 29, the day after the passage of the measure calling a constitutional convention was assured, the Sentinel said: "It is generally conceded that the present Constitution is impracticable in many respects and that the public welfare would be promoted if in those particulars it could be changed to overcome evident deficiencies . . . . There is but little difference of sentiment as to the necessity of amending the present Constitution." But they greatly deprecated any change "unless to remedy admitted positive evils, for nothing is more detrimental to public and private interests than fluctuating, uncertain laws and policy." A fortnight later the policy of this paper was somewhat less heroic. There is "a mania abroad for constitution tinkering," they said on February 17, and since various provisions were objectionable to various people a convention was to be called to make another "which this class now think can be made perfect." Eight years were required "to find out the advantages and imperfections of the present one, and now it is proposed to get up another to experiment on for another term of years." The Evansville Enquirer admitted that "there are some defects in the present Constitution, and no person will presume to deny it." The New Albany Ledger was wary in its admis-

sions that "the Constitution might \* \* \* be amended for the better in several particulars,"<sup>24</sup> but that the inconveniences were not great. The New Albany Tribune said there was an "almost \* \* \* unanimous admission that our present Constitution is defective," that eight years had elapsed since its adoption and still no one understood it.<sup>25</sup> The Fort Wayne Times thought its defects were "unbearable."<sup>26</sup> Of the Opposition papers which opposed the calling of a Convention, The Terre Haute Express,<sup>27</sup> the Wabash Express<sup>28</sup> and the Centerville True Republican thought there was a "decided general conviction that the Constitution needs amending in some particulars."<sup>29</sup> The Lawrenceburg Register emphasized the opposite consideration by insisting that the main features of the Constitution were satisfactory.<sup>30</sup>

There was undoubtedly a wide-spread distrust of a convention. This fear was expressed, in good or bad faith, by the Democratic press, and even those Opposition papers which were most positive in their demands exhibited no little trepidation. Many people believed that there was no assurance that a convention would make any improvements or reforms and they might make matters worse.<sup>31</sup> "A convention cannot assemble, unless composed of a majority of the friends of the present Constitution, which will not attempt to remodel it in all its essential provisions . . . . Such is the restless spirit abroad for change that it would not be satisfied without an entire reconstruction of our organic law. . . . The great evil of the times is fluctuating laws. To prevent sudden changes, without due consideration, is one of the objects intended to be accomplished by the present constitution . . . . This wise restraint should not be unloosened to gratify scheming politicians and visionary theorists in the science of government . . . to preserve the valuable provisions in our present Constitution—to give stability to the laws and institutions inaugurated under it—the attempt of a few political schemers to manufacture a new Constitution to suit their visionary theories of government and to advance the interests of party," should be unflinchingly opposed.<sup>32</sup> The hobby of the advocates

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24. July 19th and 21st.

25. April 9th.

26. Quoted in Sentinel, August 20th.

27. Quoted in Sentinel, August 25th.

28. Quoted in N. A. Ledger, August 27th.

29. Quoted in Sentinel, September 10th.

30. Quoted in Sentinel, May 9th.

31. Lawrenceburg Register, Sentinel, May 9th.

32. Sentinel, August 20th.

of a Convention was free education but they hope "to accomplish their end—a Convention to reconstruct the organic law of the State," and when once called together this purpose would sink into insignificance . . . ." We trust that a false issue will not lead the people of Indiana to call a Convention to again unsettle our State policy . . . ." <sup>33</sup> Such a convention, "composed of material filled with crochets and abstractions about the science of government," might even injure or destroy the valuable provisions in our present organic act. <sup>34</sup> The danger of a convention was its "acting under impulses suggested by a change demanded by sound public policy in one instance," resulting in a change "which in other instances would be equally injurious." <sup>35</sup> In the last convention, each member had "some hobby to engraft upon the instrument, influenced by the laudable ambition to hand his name down to fame." <sup>36</sup> It was "inexpedient" at the time; the Constitution would be made worse rather than better; "remodeling the Constitution will have a tendency to establish a bad and dangerous precedent—that of too frequently changing the form of government." The courts had not yet arrived at a "thorough understanding" of the Constitution and to change it would "involve the people in doubt and perplexity as to the true meaning of many of its parts" and a great amount of legislation would be necessary to comply with its provisions. <sup>37</sup> The conviction that it was "dangerous to submit the entire instrument to the disposal of a Convention" whereby they might "hazard" the "good parts" of the present organic law, was shared equally by people of all political faiths, and freely expressed by such influential Opposition papers as the *Terre Haute Express* <sup>38</sup> and the *Centerville True Republican* which solemnly adjured the people to "bear the evils that we have rather than fly to others that we know not of." <sup>39</sup> The *Sentinel* thought it would be wiser "to amend the known and acknowledged imperfections of the present Constitution . . . to put up with some temporary inconveniences which can be remedied by amending the Constitution . . . and let the good remain undisturbed, rather than to

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33. *Sentinel*, August 29th.

34. *Ibid.*, August 25th.

35. *Ibid.*, February 17th.

36. *Ibid.*, August 31st.

37. *Jay County Democrat*. Quoted in *Sentinel*, March 29th. See, also, *Boone County Pioneer*. Quoted in *Sentinel*, March 16th, and *Richmond Jeffersonian*.

38. Quoted in *Sentinel*, August 25th.

39. Quoted in *Sentinel*, September 10th. For similar sentiments see *Wabash Express* "an ultra Opposition paper", quoted in *N. A. Ledger*, August 27th.



jeopardize its wise provisions in an attempt at improvement . . . and run the risk of losing these valuable restraints.’’<sup>40</sup> While committed to the policy of calling a convention to secure amendments more expeditiously, the Journal manifested a concealed fear that a convention might go too far. In an editorial on August 11 entitled “What Our Constitution Needs,” they said: “We don’t need a new one . . . . We only need to have the excrescences and admitted difficulties removed . . . . We should object to any effort . . . to supplant it by another manufactured under the pressure of present failings and opinions . . . . A convention can easily amend the three or four or more objectionable points in the present Constitution in two weeks . . . .’’ Moreover, when a constitution had once been adopted, the people would be obliged to adopt the whole batch, in which good and bad would be mingled, in order to get any and the pet schemes would thus be carried.<sup>41</sup>

Since the defects of the Constitution were admitted, “how these modifications can be made most economically and conservatively” was the paramount issue, and on that subject there was a “wide variance of opinion.” Three methods were admittedly possible: (1) To draft a new Constitution by a small convention composed of 50 members to be subsequently submitted for popular ratification. “If the conservative sentiment was represented in this body, so that the danger of extreme change could be avoided, there would not be much objection to this mode.” (2) To re-adopt the old Constitution, engrafting on it the best features of the new. “If the best features of both could thus be incorporated by the action of the present legislature, it would perhaps be the most satisfactory and the cheapest way of presenting the question to the people.” (3) The third method, implied above, was for successive legislatures to adopt amendments to be submitted singly to the electors.<sup>42</sup>

The legislature as we have seen was committed to the method of amendment by a convention, to which the leaders of the Republican and American parties gave their support. The alternative plan was amendment by the legislature according to the method prescribed in the Constitution itself. The opponents of the convention plan were driven to their advocacy of the legislature

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40. February 17th.

41. New Albany Ledger, July 19th and September 15th.

42. Sentinel, January 29th. This was the earliest “untrained” expression of this important journal.

method partly by real and partly by fictitious reasons. The arguments alleged by the Democratic press and politicians and sustained by the people in favor of the constitutional method were: Its economy and safety; it was almost if not quite as expeditious and the attention of the electorate would be focused on a single proposition, without the complication of a multitude of diverse propositions. The oppressive expense of a convention, which will be considered more fully elsewhere, must have had considerable weight with the voters.<sup>43</sup> The danger of submitting the entire instrument to a convention whereby the good parts of the organic law might be hazarded, was an equally effective argument.<sup>44</sup> The inconveniences of the Constitution were not so great<sup>45</sup> and "all needed reforms can better be accomplished by amendment than by a remodeling of the Constitution",<sup>46</sup> it was "much more safe and equally as efficient."<sup>47</sup> To the argument that the constitutional method was too slow the opponents of a convention replied that the legislative method was speedy enough; that four years was not too long to wait for amendments;<sup>48</sup> that "no public necessity demands a speedier change in that instrument than can be accomplished through its own agency",<sup>49</sup> and that amendments could not be secured more quickly by a convention than by the legislature.<sup>50</sup> The *Terre Haute Express* and the *Wabash Express*, both unshaken adherents of the Republican party, advised the electors to vote against the proposed convention and then urge the propriety of legislative amendments.<sup>51</sup> The objection to amendment by the legislative method that it would require the assent of two successive General Assemblies and then an election by the people, that this method was too slow and that it was difficult to get the assent of two successive legislatures to any proposed amendment, was the best evidence that "the change attempted is not really demanded for the public good and that which at one time was considered a reform subsequent reflection

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43. *Evansville Enquirer*. Quoted in *Sentinel*, July 20th; *N. A. Ledger*, Quoted in *Sentinel*, August 2d; *Bedford Press*, Quoted in *Sentinel*, August 6th; *Wabash Express*. Quoted in *N. A. Ledger*, August 27th; *Sentinel*, August 20th; *Miami County Sentinel*. Quoted in *Sentinel*, March 14th.

44. *Terre Haute Express*. Quoted in *Sentinel*, August 25th; *N. A. Ledger*, July 19th.

45. *N. A. Ledger*, July 21st.

46. *Sentinel*, February 17th.

47. *Jay County Democrat*. Quoted in *Sentinel*, March 29th.

48. *N. A. Ledger*, July 21st.

49. *Sentinel*, August 25th.

50. *Sentinel*, August 31st.

51. Quoted in *Sentinel*, August 25th, and *N. A. Ledger*, August 27th.

would regard only as an innovation.’’<sup>52</sup> The last argument was that the sentiment of the people would be focused on one single amendment and no bad provisions would hazard the outcome.<sup>53</sup>

The proponents of the convention method considered the legislative mode the only way not to amend the Constitution. That method had been tried unsuccessfully for 9 years and not a single amendment had yet been adopted, in spite of the universal demand. The *Indiana American* thought it could never be done in this way.<sup>54</sup> For a legislature to make a constitution would be to “neglect its legitimate business.”<sup>55</sup> Moreover, this method was objectionable because it must pass two legislatures and would be “complicated with personal aims and party claims.”<sup>56</sup> A convention would have nothing else to do and the matter would not be complicated. The legislative enactment would require four or five years, a convention only one. The cost would not exceed \$15,000 and \$20,000 would be saved annually to the free schools alone.<sup>57</sup>

The one argument used by practically all the Democratic papers of the State in opposition to the call of a convention was the cost, especially “when money matters are extremely stringent” and when the people are burdened with taxes.<sup>58</sup> The people are now literally eaten up by taxes—in God’s name do not make the load any heavier.”<sup>59</sup> The *New Albany Ledger* regarded the project as a “silly scheme for squandering the money of the people.”<sup>60</sup> The Republican press estimated the probable expense at from \$15,000—\$35,000. They did not think it was necessary for the convention to sit more than one month, and that the talk of expense was “all gammon.”<sup>61</sup>

Aside from the method by which the Constitution was to be amended, the important consideration was the nature of the amendments which were proposed.

52. *Sentinel*, February 17th.

53. *Ibid.*, August 16th.

54. Quoted in *N. A. Tribune*, July 29th.

55. *N. A. Tribune*, April 9th.

56. *Journal*, August 30th.

57. *Ibid.*

58. *Jay County Democrat*. Quoted in *Sentinel*, March 29th.

59. *Boone County Pioneer*. Quoted in *Sentinel*, March 16th.

60. July 19th.

61. For expressions of opinion see *Lawrenceburg Register*, quoted in *Sentinel*, May 9th; *Evansville Enquirer*, quoted in *Sentinel*, July 30th; *N. A. Ledger*, quoted in *Sentinel*, August 2d; *Bedford Press*, quoted in *Sentinel*, August 6th; *Terre Haute Express*, quoted in *Sentinel*, August 25th; *Wabash Express*, quoted in *N. A. Ledger*, August 27th; *Sentinel*, August 31st; *N. A. Tribune*, April 9th; *Evansville Journal* quoted in *N. A. Tribune*, July 19th; *N. A. Tribune*, September 15th; and *Richmond Jeffersonian*.



Local legislation had not only been permitted but it had been flagrantly abused under the old Constitution. Special measures, restricted in their application, were expressly prohibited by the Constitution of 1851. On the whole this was undoubtedly a wholesome restriction but there were cases in which a modified form of special legislation, adequately safeguarded, would have been desirable. There was no widespread demand for the removal of this constitutional provision but its relaxation in some particulars was undoubtedly desired. This demand was unfavorably construed as a desire for class legislation on the part of those interests which hoped to profit by special laws. "Exclusive legislation is only called for by those seeking privileges denied by the common law to people generally."<sup>62</sup> The "grand object" of the call of a convention was to secure an amendment to authorize local and special legislation.<sup>63</sup> The corporate interests were opposed to wholesome restrictions and individual responsibility, because they wanted to see the restrictions against local legislation removed in order that certain institutions, companies and individuals might be able "to secure special favors from corrupt or susceptible legislators."<sup>64</sup> It was a scheme of trading politicians and impractical reformers to get rid of a constitution which prohibited class legislation.<sup>65</sup> When the present Constitution was adopted, said the Sentinel on February 17, the evils resulting from local legislation were "almost unbearable." The restrictions imposed "operated unfavorably" in some cases. It had "resulted disadvantageously in the common school system, so far as incorporated towns and cities are concerned." A remedy could be found for these exceptions without "opening the flood gate of local legislation" and destroying a "restriction which has been found wholesome as a general rule."

Another alleged reason for calling a convention was to remove the restriction upon the increase of the State debt, which was only a step to the removal of all such inhibitions.<sup>66</sup> The Constitution was a wholesome and effectual bar against the creation of a State debt, against stock jobbing, against embarking in internal improvements and against lending the credit of the State to incorporate companies of individuals for such purposes.<sup>67</sup> The Demo-

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62. Lawrenceburg Register, quoted in Sentinel, May 9th.

63. Bedford Press, quoted in Sentinel, August 6th.

64. N. A. Ledger, September 15th.

65. N. A. Ledger, July 19th; see, also Sentinel, August 29th.

66. Sentinel, August 29th.

67. Miami Co. Sentinel, quoted in Sentinel, March 14th.

cratic press also urged that the Republicans were interested in the call of a convention to take back the Wabash and Erie Canal.<sup>68</sup> It was the policy of the Constitution “to give stability to laws and legislation and to prevent an increase in the State indebtedness” and it would be foolhardy to “recklessly jeopardize these wholesome provisions.”<sup>69</sup>

There was a strong movement for a return to the old system of annual instead of biennial sessions. But this change, it was urged, could be effected by a legislative amendment.<sup>70</sup> The Jay County Democrat demanded annual sessions, restricted to 40 or 50 days, which would “afford more speedy relief from the errors” of a legislature.<sup>71</sup> The South Bend Register<sup>72</sup> and the Evansville Journal wanted the restrictions on the limit of sessions removed,<sup>73</sup> while the St. Joseph Valley Register advocated limiting the pay of the legislators but not the term of the session.<sup>74</sup> The South Bend Register<sup>75</sup> and the St. Joseph Valley Register<sup>76</sup> wished to shorten the term of the Governor so that he would be elected oftener than once in 4 years. The South Bend Register and the St. Joseph Valley Register desired a constitutional amendment providing for the submission of laws involving new and important principles to the popular vote.<sup>77</sup> Some of the State papers favored a partnership with banks and others a complete divorce from that business.<sup>78</sup> The abolitionists did not believe in prohibiting negro immigration. The Constitution as it then stood placed a restraint on the increase of negro and mulatto population by immigration and the large per cent of the people no doubt favored its retention.<sup>79</sup> The Maine Law partisans wanted an express provision in the Constitution to authorize the passage of a prohibitory law,

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68. N. A. Tribune, April 9th.

69. Sentinel, February 17th.

70. Lawrenceburg Register, quoted in Sentinel, May 9th; Sentinel, August 29th and February 17th; Journal, March 8th; St. Joseph Co. Forum, quoted in Journal, September 8th; Vincennes Gazette, Sentinel, August 20th and September 2d.

71. Sentinel, March 29th.

72. Sentinel, September 8th.

73. N. A. Tribune, July 19th.

74. N. A. Tribune, September 6th.

75. Sentinel, September 8th.

76. N. A. Tribune, September 6th.

77. N. A. Tribune, September 6th.

78. Sentinel, August 29th and Vincennes Gazette, quoted in Sentinel, August 20th, and September 2d.

79. Lawrenceburg Register, quoted in Sentinel, May 9th; Sentinel, August 29th; N. A. Ledger, September 15th.

interdicting the manufacture or sale of alcoholic, vinous or malt liquors within the State.<sup>80</sup>

The demand for a change in the method of electing judges was rather pronounced.<sup>81</sup> Then as now the judges were elected by the people. Four distinct changes were recommended. (1) The Judges should be elected at other than general elections. (2) Judges should be elected by districts instead of on a general ticket.<sup>82</sup> A political supreme bench was a great evil. John Pettit had made it a party question by providing for an election of these officers on a general ticket. (3) The judiciary should be elected by the legislature. In this way they would not be party men, and would not be so responsive to the popular whims. The opponents of this proposition thought the judgeships would be "bartered off as the necessities of needy or seedy politicians may seem to demand." The suggestion was also made to provide for appointments by the Governor or by the Governor and legislature acting jointly.<sup>83</sup> The Jay County Democrat wanted an amendment of the constitutional provision which prohibits a judicial officer from holding any other than a judicial office during the term for which he was elected; this provision prevented most men who were competent from accepting the office of justice of the peace.<sup>84</sup>

Serious objection was raised to the two-thirds quorum necessary to do business in the General Assembly. Some critics contended for a quorum of the number present and some for a majority.<sup>85</sup> One of the most notorious and flagrant evils was the huge importation of foreign voters at each election. Many attempts had been made to suppress this evil by a constitutional amendment. As interpreted by the Supreme Court, "the Constitution is a positive, irremovable bar to all efforts to . . . remove the evils of dishonest elections." Both a residence and a registry law were held unconstitutional and the importation of voters could not be prohibited.<sup>86</sup> Some such amendment was necessary "to restrain the infamous election frauds."<sup>87</sup> The naturalization law

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80. Lawrenceburg Register, quoted in Sentinel, May 9th; N. A. Ledger, September 15th; Sentinel, August 29th; N. A. Tribune, April 9th.

81. South Bend Register, quoted in Sentinel, September 8th.

82. St. Joseph Valley Register, quoted in N. A. Tribune, September 6th.

83. N. A. Ledger, September 15th; Sentinel, August 29th; Ft. Wayne Times, quoted in N. A. Tribune, August 26th.

84. Sentinel, March 29th.

85. St. Joseph County Forum, Journal, September 8th; South Bend Register; St. Joseph Valley Register, quoted in N. A. Tribune, September 6th.

86. Journal, April 15th.

87. Journal, August 11th; N. A. Tribune, April 9th.



was a "foul blot" and there should be an "increase in the time of residence to entitle our foreign born population to the privilege of voting",<sup>88</sup> and a five-year probation period should be granted. Michigan and New York had registry laws which took effect in the fall of 1859<sup>89</sup> and Indiana needed such a law to effectually prevent illegal voting and to prohibit importations by residence qualifications and a registry law.<sup>90</sup> The Democratic press insisted that no evil had resulted from allowing foreigners to vote, and that the measure was "only called for by the bigoted and proscriptive policy of Know Nothingism",<sup>91</sup> which demanded an amendment as restrictive as the Massachusetts amendment.

Between April 9 and September 26, 1859, thirty-four Democratic county or township conventions were held whose proceedings have been preserved in the newspapers of that period. Twenty of these either passed no resolutions on the subject of a constitutional convention, or if such resolutions were passed, they do not appear in the proceedings.<sup>92</sup>

Twelve counties and one township (Franklin Township, Marion County) passed strong resolutions in opposition to the calling of a convention. It is impossible to determine how many of these resolutions were inspired from a central source. The Republican or Opposition press of the State charged that the Democratic

88. Vincennes Gazette, quoted in Sentinel, August 20th and September 2nd.

89. N. A. Tribune, September 16th.

90. St. Joseph Valley Register, quoted in N. A. Tribune, September 6th.

91. Lawrenceburg Register, quoted in Sentinel, May 9th; N. A. Ledger, September 15th and Journal, March 8th, Richmond Jeffersonian.

92. List of counties which passed no resolutions relative to calling a constitutional convention, with dates of the conventions and the date of the issue of the newspaper where they may be found.

Jackson	April 9	Sentinel, May 31
Boone	May 28	Sentinel, May 31
Marshall	June 18	Sentinel, June 28
Putnam	June 25	Sentinel, July 4
St. Joseph	July 3	Sentinel, August 8
Decatur	July 9	Sentinel, July 15
Floyd	July 27	New Albany Ledger, August 16
Jennings	July 30	Sentinel, August 6
Marion	August 6	Sentinel, August 8
Porter	August 6	Sentinel, August 17
Clark	August 13	N. A. Ledger, August 18
Cass	August 13	Sentinel, August 20
Vigo	August 20	Sentinel, August 24
Greene	August 27	N. A. Ledger, September 3
Spencer	August 27	N. A. Ledger, September 3
Fountain	August 27	Sentinel, September 10
Allen	September 10	Sentinel, September 16
Lawrence	September 17	N. A. Ledger, September 21
Montgomery	September 24	Sentinel, September 28
Tippecanoe	September 24	Sentinel, October 3

leaders had consciously committed the party to this course. The bill which was finally passed was supported by many Democratic members and signed by a Democratic Governor. The Indianapolis Sentinel was charged with reversing itself "solely from party consideration",<sup>93</sup> and its editorials were undoubtedly more hostile and uncompromising as the election approached. On May 24, there was a meeting of the Democratic State Central Committee in Indianapolis, assembled for the purpose of fixing a date for the next Democratic State Convention. It is probable that the question of calling a constitutional convention was discussed, but no recorded action was taken, and if the Democrats "compacted their resistance"<sup>94</sup> at that time their dictum must have been passed around quietly, and without attracting the immediate attention of the Opposition press. Two months later, however, on July 21, the New Albany Tribune, a staunch Republican print, and an assiduous and unremitting advocate of the call of a convention, adverted to a meeting of the Democratic leaders at Indianapolis which must have been the State Central Committee. This caucus they said, had "determined . . . that the proposition to call a new convention should be defeated." They made preparations accordingly, and the "first public demonstration" of this organized hostility was at the Harrison county convention on July 16, "held under the auspices of Mr. Cyrus L. Dunham"<sup>95</sup> where resolutions opposing a convention were adopted. "This proceeding will doubtless be re-enacted in other Democratic county conventions yet to be held." No reliable conclusions can be drawn from these charges, but considering the overwhelming majority by which the proposition was defeated at the polls, it is safe to say that if such instructions were promulgated they either achieved an unparalleled success, or they were a work of supererogation. The reasons alleged in the resolutions adopted by the county and township convention for their opposition to calling a convention were the following: (1) The power of the banks of the State would be increased; (2) The restriction on legislative power would be removed; (3) The right of suffrage would be curtailed and abridged; (4) The cost of the convention would materially increase the already excessive taxation; (5) It was the pet scheme of the Black Republicans, and

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93. Journal, August 2, 1859.

94. Ibid.

95. Dunham was one of the most skilful and aggressive Democratic leaders of the State.

they objected to being made subservient to partisan interests; (6) It would unsettle the judicial constructions of the present Constitution; (7) It was unsafe, inconvenient, mischievous, unnecessary and inexpedient and would result in evil and only evil and that continually; (8) Frequent changes of the Constitution were injurious to prosperity, exposed the rights of persons and property to needless hazard and were opposed to public morality; (9) It would prepare the way to foist the indebtedness of the Wabash and Erie Canal on the State; (10) The Constitution had not been sufficiently tried and was not understood; (11) They were satisfied with the present Constitution, but if amendment was necessary they preferred the constitutional method.

In the Perry county Democratic convention, there was a contest over the proposition of calling a convention and it is difficult to determine whether the convention voted the proposition down or whether it failed for lack of time to properly consider the question, or a combination of both or for other hidden reasons. The convention in that county was held on August 6th, and several resolutions were adopted in regard to the national policy of the Democratic party. A few days later the Evansville Journal, a Republican paper and a proponent of the convention proposition, contained the following editorial: "At a recent Democratic convention in Perry county, one of the 'wire pullers', in accordance with the scheme of the Lecompton leaders at Indianapolis, introduced a resolution condemning the call of a constitutional convention, which after a warm discussion, was voted down." In a communication to the New Albany Ledger of September 14th, "Perry county" replied to this stricture by saying that when the convention was in the act of adjourning a resolution was introduced in opposition to the call of a convention. The hour was late and the convention was already disorganized, and on suggestion it was immediately withdrawn by the introducer, and no action was had thereon.<sup>96</sup>

By the action of the last legislature, the Republican party was definitely committed to the proposition of calling a constitutional convention. Very few Republican county convention proceedings prior to the October election have been preserved. An inspection of those which we have discloses the fact that no convention adopted a resolution favorable to a convention. Judging by the outcome of the election, and the fact that a large number of Repub-

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96. See, also, Sentinel, September 17, 1859.



licans voted against the proposition, we may conclude that there was not sufficient popular sentiment in any county to carry such a resolution. The St. Joseph Valley Register, a Republican paper, regretted that the question had been made a party issue and said that the Republican county conventions had refused to endorse the proposition because they did not wish to make it a party issue.<sup>97</sup>

The proceedings of only seven Republican county conventions have been preserved in the newspapers of that day and none of these took action on the question.<sup>98</sup>

The general election of 1859 was held on October 11. From the scanty returns available it is evident that the proposal to call a constitutional convention was overwhelmingly and decisively defeated. In an editorial of January 29, 1861, the Indianapolis Journal summed up the reasons for the defeat of the proposition. "When the people voted against the calling of a convention it was not because they believed the Constitution was not in need of amendment but because they feared a convention might make a worse Constitution than the present one and because of the heavy expense, and they preferred the method of amendment pointed out in the Constitution." In the 41st General Assembly of 1861, the Republicans had a majority in each House, and were therefore enabled to propose such amendments as in their judgment were necessary to liberalize the Constitution in some of its more unresponsive features. On January 14, on representation of some of the citizens of the State that the present Constitution did not "afford sufficient margin for the full development of her resources in all the elements that are calculated to make her a great State", a committee of 5 senators was appointed to inquire into the necessity of amending the Constitution and report by bill or otherwise.<sup>99</sup> Accordingly, amendments were proposed and adopted by substantially unanimous majorities in both Houses authorizing the General Assembly to prescribe the length of time during which an elector must reside in the county, township, pre-

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97. Quoted in New Albany Tribune, September 6.

98. List of Republican county conventions, with dates and the issue of the newspaper where they may be found.

Boone	June 11	Journal, June 24
Kosciusko		Journal, July 12
Putnam	July 19	Journal, July 30
Elkhart	August 6	Journal, August 16
Fountain		Journal, August 31
Allen	September 17	Journal, September 21
Montgomery	September 17	Journal, September 26

99. Senate Journal, 41st Session, 50.

cinct or ward in which he offered to vote;<sup>1</sup> and empowering cities, towns and townships to raise school revenue by taxation in addition to the revenue derived from the State.<sup>2</sup> This was the first time that the amending process had actually been invoked and a solution of the two most perplexing constitutional questions seemed to be assured. In 1863, however, the Republicans, who had proposed these measures, lost control of the General Assembly, and neither proposition was advanced to maturity. In 1865 the Republicans were in control of the House and had 25 members of the Senate. The amendment enabling school corporations to levy supplemental school revenue was readopted,<sup>3</sup> but a much desired amendment enabling soldiers in the field to vote was defeated. The failure to secure amendments inspired the conviction that the amending process of the Constitution was unworkable. This conviction led to the introduction of a resolution in the House on January 12 declaring that the mode of amendment provided in the Constitution was "slow and uncertain in its operations"; that many amendments were desired "as indicated by former votes of the legislature"; that these amendments had not failed because of popular opposition but "because of the inherent difficulties of the mode prescribed." The author of the resolution, therefore, proposed that the qualified electors of the State should elect one delegate in each senatorial district, on the first Monday in April, 1865, to constitute a convention to meet on the first Monday of May, 1865, to revise and amend the Constitution. The Constitution as amended was to be submitted to the qualified electors at a special election held on the first Monday of August, 1865, and if ratified by a majority of the electors was to become operative on the first Monday in September.<sup>4</sup> This resolution was submitted to the Judiciary Committee but no report was ever made. A second measure to provide for submitting the question of calling a constitutional convention to the people was reported back from committee without recommendation.<sup>5</sup>

No further attempt was made to call a constitutional convention until 1871. During the session of that year, on January 18, Mr. Calkins of Porter county introduced a bill in the House providing for the call of a constitutional convention. This bill was

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1. Laws, 41st session, 185.

2. Laws, 41st session, 186.

3. Laws, 1865, p. 131.

4. House Journal, 44th session, 87.

5. House Journal, 44th session, p. 249.

modeled on the act of 1848 and provided that the election should be held in September, 1871. In a speech advocating the passage of this bill, Mr. Calkins enumerated the changes which should be made in the Constitution. The Judiciary was imperfectly organized and there were not enough supreme judges to properly dispense the public business; moreover, a radical change should be made to remove judges from partisan politics. Railroads also should be brought under control to prevent them from monopolizing the financial and commercial interests of the State, preventing them from prescribing discriminatory rates, watering stock, and unjustly condemning private property for rights of way and supplies of gravel. Warehouses should be regulated and railroads required to deliver goods to any consignee designated; the failure of the railroads to do this had robbed the people of the State of three times the cost of a convention. Minority representation should also be provided for. The constitutional changes proposed by Mr. Calkins were inspired by the wide-spread agrarian unrest that prevailed during the decade from 1870-1880. The House had this bill under consideration in the Committee of the Whole on January 25 and on February 7 it was indefinitely postponed.<sup>6</sup>

In his message to the special session of the General Assembly on November 14, 1872, Governor Baker strongly urged the calling of a constitutional convention. He reminded the legislature that 21 years had elapsed since the adoption of the present Constitution, and that the time had come "when the best interests of the State require that provision should be made for calling a convention." The changes which should be made included the elimination of the discriminatory negro provisions; more stringent regulation of the suffrage, as it was "impossible to have an election law that will be efficient in preventing fraudulent voting;" an improvement in the judicial system; civil service reform; and the election of only a portion of the supreme judges at one time.<sup>7</sup> The enthusiastic recommendation of the Governor led to the introduction of 4 measures to call a convention. Three of these bills were indefinitely postponed.<sup>8</sup> The fourth measure was reported favorably but was laid over until the beginning of the regular session.

In his message to the General Assembly, at the regular session, on January 10, 1873, Governor Baker said that he was "still deeply impressed with the necessity and importance of calling a

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6. House Journal, 1871, p. 219; Brevier Report, 1871, p. 477.

7. Senate Journal, 1872, p. 20.

8. Senate Journal, 1872, pp. 230, 198 and 281.



convention of the people at an early day to revise the Constitution of the State'', and he submitted an economical plan for ascertaining the sentiment of the electors on this subject. The Wabash and Erie canal amendment had been adopted in 1871 and re-adopted at the special session of 1872. The Governor suggested that provision should be made for the submission of this amendment to the people on the second Tuesday of October, 1873; that, at the same election, delegates should be elected to a constitutional convention, and the question, whether or not a convention should be convened, should be submitted to the voters; if a majority of the electors voting were in favor of a convention, then the convention should meet on the day named in the act; if a majority of the electors were opposed to a convention, then the election of delegates should be null and void. By this plan the expense of but one election would be incurred and yet all questions involved would be submitted to and decided by the qualified electors.<sup>9</sup> Governor Baker's term of office expired on January 13 and he was succeeded in the governorship by Thomas A. Hendricks. In his inaugural address, Governor Hendricks recommended the adoption of a constitutional amendment fixing the residential qualifications for suffrage, but since the Constitution "wisely provides for its own amendment, by a convenient and economical proceeding'', it would be unnecessary to throw upon the people the expense of a convention.'' Besides, amendment by the legislative process would obviate "the possibility of change not desired by them."<sup>10</sup> Thus at the beginning of the session of 1873, a bill providing for calling a convention was under consideration, and the recommendations of retiring Governor Baker and the in-coming Governor Hendricks, of diametrically opposite import were before the General Assembly. On January 15, the pending bill was taken up and referred to the Judiciary Committee, and on January 23 the committee reported the measure back to the House without recommendation. On February 5, the bill passed the House by a vote of 52-29; it was then reported to the Senate and referred to the Committee on Elections and reported favorably on March 4 but not subsequently considered.

It is quite impossible to determine whether a popular demand existed at this time for calling a constitutional convention. Gov-

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9. House Journal, 48th Session, 25.

10. House Journal, 48th Session, 80.

ernor Baker and Governor Hendricks, as has been shown, disagreed in their conclusions on this point; the two leading party papers in Indianapolis were non-committal; and the sentiment expressed in the debates on this measure present widely divergent views. Mr. Heller, the author of the bill, was decidedly equivocal. He thought a majority of the people were in favor of a convention, but he was "not entirely clear as to his duty in the premises", as he could "not clearly see the real necessity for a call, as we all well know there is a way provided for amending the existing instrument." A convention would cost thousands of dollars and there was imminent risk of weakening the organic law. The measure, he admitted, was partisan. In spite of his reluctance to support the measure, he was convinced that the General Assembly was determined to call a convention; and the people should be permitted to say whether they wished to expend a half million dollars for a few minor constitutional changes when the same amendments might be secured without price. Mr. O'Brien was convinced that "the people expect and are prepared for the calling of a convention." Mr. Sleeth thought no such demand existed. Mr. Neff opposed the project because of the cost which he estimated at \$300,000 or \$400,000. The bill passed the House on February 5, some two weeks before the Canal amendment was ratified and until that event had actually transpired no one knew whether the amending process of the Constitution was entirely workable. The favorable report of the Senate committee on the bill was made on March 4 fully two weeks after the Canal amendment had become a valid part of the Constitution. The knowledge that the amending process, for the first time in its history, had actually worked may have influenced the Senate to reject the measure.<sup>11</sup>

No further attempts to call a constitutional convention were made until 1877 when a bill passed the House by the narrow vote of 51-26 but was rejected in the Senate.<sup>12</sup> Two years later, in 1879, a bill was introduced in the House but was never reported from committee.<sup>13</sup> It was during these two sessions that seven amendments were adopted and submitted to the electors and hence the necessity for a constitutional convention seemed less pressing.

In his message to the General Assembly on January 8, 1881,

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11. Brevier Report, 1873. p. 367 and 383; Senate Journal, 198, 281 and 230 House Journal, 25 and 480.

12. House Journal, 50th Session, p. 53.

13. House Journal, 1879, p. 426.

Governor Gray, whose term of office was about to expire, strongly recommended the calling of a constitutional convention. During the thirty years which had elapsed since the adoption of the present Constitution, the population of the State had doubled, and the increase in the material wealth of the people had been equally great. Many provisions of the Constitution had become obsolete and experience had suggested many changes and amendments. Also, the Governor believed the best mode of revising the Constitution was by a convention. He thought the convention should consist of 50 members chosen from senatorial districts; such a body would be large enough and with the old Constitution at hand to serve as a guide, the sittings of the convention would not be very long.<sup>14</sup> Two days later, on January 10, Governor Porter, in his inaugural address, opposed the calling of a convention. He did not think there was a necessity for such a convention; the people would not patiently incur the needless but great expense of assembling a convention. Besides, the present Constitution, "contains an admirable provision for its own amendment, without the assembling of a convention." By the operation of the amending provision, two extremes were avoided: "the one, of not allowing the Constitution to respond by amendment, with reasonable promptness, to the deliberate will of the people; the other, of hastily placing in the Constitution improvident provisions which it would be difficult to withdraw." The provisions of the existing Constitution were, in the main, wise and satisfactory; they had been interpreted by the courts and their construction was fixed and determined. If a new Constitution were framed, "we shall again be launched upon a sea of doubt, and be compelled to incur the expense and inconvenience, which, in practice, will be found to be great, of having the meaning of its principal provisions settled by judicial construction."<sup>15</sup>

With contradictory recommendations before the General Assembly, it seemed certain that measures would be considered to call a convention but that the influence of the new Governor would be exerted against their passage. The first of these bills was introduced in the Senate on January 11 and referred to a select committee of one from each congressional district. This committee declined to make any recommendations as the matter, in their judgment, ought to be determined by the whole Sen-

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14. House Journal, 52d Session, 37.

15. House Journal, 52d Session, 83.



ate. After repeated postponements, the bill was finally defeated in the Senate by a vote of 21-28. There was considerable sentiment in both parties for a convention and equal apprehension of what might occur if a convention were called. The Indianapolis Journal of January 10, openly opposed a convention. "The holding of a constitutional convention is a matter of doubtful wisdom, to say the least. It would cost a large sum of money, and once in session might tinker the Constitution more than is desirable." Each party was fearful that if a convention were called its opponent would succeed in electing a majority of the delegates. The advocates of a convention were relying on the uncertainty whether the amendments declared rejected by the Supreme Court in 1880 could be resubmitted to the people. The control of railroads, the liquor traffic, and woman suffrage were also advanced as arguments for a convention.<sup>16</sup> The opponents of the bill cited the expense of a convention, the fact that the amending process was satisfactory and the further consideration that the times were radical and the calling of a convention would be a dangerous experiment. The House bill received scant consideration and was indefinitely postponed while the Senate bill was still under consideration.<sup>17</sup>

The session of 1883 was characterized by a notable wrangle over the adoption of amendments conferring the right of suffrage on women and prohibiting the manufacture and sale of intoxicating liquors. Only one bill was introduced to provide for calling a constitutional convention and this was never reported back from committee. The heated contest of this session subsequently reflected itself in the party platforms. The Republican party which had stood sponsor for the ill-fated amendments, incorporated a plank in their platform on June 19, 1884, favoring the call of a convention for the reason that the great increase of wealth and population had outgrown the present Constitution.<sup>18</sup> The Democratic party, which assembled in convention on June 25, opposed the call of a convention, as it would be "a great and useless expense" and would "result in unsettling laws and systems now well established and understood, and which could not be as well understood under a new Constitution for a quarter of a century." The Constitution needed no tinkering "in the interest of any party seeking to invade the rights of private property and

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16. Brevier Reports, 1881, pp. 125-130.

17. Senate Journal, 52d Session, 62; House Journal, 168.

18. Indianapolis Journal, June 20, 1884.

personal liberty now secured by the Constitution.” Necessary amendments could be secured “in the cheap, simple and just manner” provided in the Constitution.<sup>19</sup> As the Democrats were largely in a majority in the session of 1885, it was a foregone conclusion that any convention measures would be defeated by a party vote. One bill was introduced in the House and one in the Senate, both by Republicans; both bills received a perfunctory consideration and both were finally rejected by substantial majorities.

During the sessions of 1885 and 1887, the General Assembly displayed great activity in the adoption of amendments for submission to the people and it seemed likely that some desirable changes might be secured. A deadlock in the session of 1887 over the election of Lieutenant-Governor, however, prevented the adoption of the 1885 amendments and an attempt to call a convention was summarily defeated.

In 1889 the Democrats were strongly entrenched in power in both houses. The outgoing Governor was Isaac P. Gray, who in 1881 had advocated the calling of a constitutional convention. Gray was at that time acting Governor owing to the death of Governor Williams. In 1884 he had been nominated by his party and triumphantly elected. In his biennial message to the General Assembly on January 11, 1889, Gray completely reversed himself on the question of calling a convention. He thought it advisable and necessary to adopt certain amendments but “it is not believed that a necessity exists for a constitutional convention.” Every proper amendment could be secured in the manner provided in the Constitution at small expense to the people and “without presenting the opportunity of unsettling a system of government well understood and tested by long service.”<sup>20</sup> In conformity with the sentiments expressed in their party platform of 1884 and confirmed by the Governor, no attempts were made either in 1889 or in 1891 to call a convention. In 1893 the General Assembly was still strongly Democratic and the Governor, Claude Matthews, was staunchly opposed to any form of amendment except that pointed out in the Constitution itself. The “blessings of good government”, he said, “flow largely from our admirable State Constitution.” The experience of over 40 years had proved the “beneficent character and wisdom” of the Constitution which “wisely

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19. Indianapolis Sentinel, June 26, 1884.

20. House Journal, 56th Session, 47.

provides a plain and intelligent way for amending it, when amendments are necessary.' This plan obviated the necessity of "the great expense of a convention, the confusion, and long litigation which always follow the adjustment of the laws of a State to a new Constitution.'" At all events, radical changes should not be made without "the maturest deliberation and the gravest consideration."<sup>21</sup> During this session, as a probable result of the Governor's clearly expressed convictions, no constitutional measures were introduced.

In 1895 the Republicans were returned to power and controlled both houses. During that session two substantially identical measures were under consideration in the House both designed to submit to the people the question of calling a constitutional convention, and both were defeated after scant consideration.<sup>22</sup> In 1897 no measures were introduced. In 1899, 1901 and 1903, one measure during each session was under consideration in the Senate but all were defeated. In 1907, two measures were under consideration in the Senate. One of these measures actually passed the Senate by a vote of 35-7, and was sent to the House for action. Two days later, however, it was recalled and was permitted to expire without action.<sup>23</sup>

In 1908, the Democrats returned to power. In spite of their protestations in favor of a convention, the Republicans had accomplished nothing. In fact the period from 1895-1909, the years of Republican ascendancy, were exceptionally fruitless in this field. The period of Democratic ascendancy, which was destined to extend from 1909-1916, was characterized by numerous unsuccessful attempts to obtain a solution of a question which is admittedly fundamental in this State. During the session of 1909, when the Democrats controlled the House and the Republicans the Senate, no constitutional measures were introduced. In 1911, the Democrats had a safe working majority in both houses and were therefore enabled to achieve any desired reforms without obstruction. In his message to the General Assembly on January 5, 1911, Governor Marshall expressed the conviction that there were certain provisions of the Constitution which did not meet existing conditions and while some amendments might be changed with profit he "should regret to see it radically altered." After enumerating certain amendments which he thought ought to be

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21. House Journal, 58th Session, 54.

22. House Journal, 59th Session, 216, 718.

23. Senate Journal, 65th Session, 149, 185.



made and reminding the legislators that no additional amendments could be proposed as an amendment was still awaiting the action of the electors, he concluded by saying that he might possibly address the General Assembly on this subject again.<sup>24</sup>

On February 13, 1911, the public press announced that a Democratic caucus, convoked with the utmost secrecy, was to be held on the evening of February 13. It was "understood in a general way that one of the questions to come up has to do with the Constitution of the State. Among the various reports of proposed action by caucus is one to the effect that an entirely new Constitution is to be proposed, another that certain phases of the document are to be gone over, and still another to the effect that the caucus will be asked to consider ways for making easier the method of amendment. None of these stories has been verified, however, and none of the members will say in advance just what phase of the question is to be considered."<sup>25</sup> This quotation from an Indianapolis newspaper, supporting especially vigilant reporters, discloses the secrecy which attended the launching of this project. The caucus was held as scheduled, the new Constitution agreed upon and a committee appointed to draft a bill. On February 14, Governor Marshall gave out an extended interview in which he said that he had consulted eminent lawyers and had become convinced that the General Assembly had the right to frame a new Constitution and submit it to the people. In this opinion, Senator Stotsenburg concurred.<sup>26</sup> The bill embodying this proposed new Constitution was introduced in the Senate on February 15.

It proposed amendments of 25 sections of the Constitution most of which were universally agreed to be excellent. The bill was advanced to maturity in both houses by the Democratic members and opposed by the Republicans. It passed the Senate on February 27, by a vote of 29-21, a strict party vote with the exception of one Democratic senator who opposed the bill. The bill passed the House on March 2 by a vote of 60-39.

This extraordinary measure constituted a departure in constitution-making in Indiana. The act was not a series of amendments, because if they were so considered it would be necessary to submit them to the next General Assembly for ratification. Hence it must be regarded as a new Constitution and the question at

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24. House Journal, 67th Session, 19.

25. Indianapolis News, February 13, 1911.

26. Indianapolis News, February 14, 1911.

once arose whether the General Assembly had power to frame a new Constitution and submit it to the people. To facilitate the adoption of the measure, the act provided that any political party might declare in favor of the proposed new Constitution and the election commissioners were required to prepare the ballots accordingly. Elaborate protests against the passage of the bill were filed in the House and Senate by the Republican members, and Senator Will R. Wood, one of the most influential members in either House, introduced a bill providing for the calling of a constitutional convention but the measure was never reported from committee.

As soon as the General Assembly adjourned, steps were taken to test the constitutionality of the act embodying a proposed new Constitution. The proceedings were instituted in the circuit court of Marion county and the act was held null and void by Judge Charles Remster. An appeal was then taken to the Supreme Court and in the celebrated case of *Ellingham v. Dye* the court sustained the opinion of Judge Remster and held that the act was invalid. The measure in question was either a series of amendments or it was a new Constitution. If it was a series of amendments, then the requirements of the amending process of the Constitution had not been complied with; if it was considered as a new Constitution, then the General Assembly had exceeded its authority; in either event, the act could not be enforced. The sponsors of the measure were dissatisfied with this decision and an appeal was taken to the Supreme Court of the United States. That court held that since no rights of a personal nature had been violated, the court was without jurisdiction and hence the conclusions of the State Supreme Court prevailed.

The year 1912 was one of unusual political ferment. The controversy over the seating of delegates in the Republican national convention in Chicago resulted in a schism in that party and led to the organization of the Progressive party. The ensuing campaign was one of education and enlightenment and resulted in injecting an unusual amount of vigor and momentum into the older parties. The Progressives, in their State platform, declared unequivocally for calling a constitutional convention and there can be no doubt of their sincerity. The Republican party endorsed the same proposal but with great reluctance and several members of the platform committee subsequently admitted that they were opposed to the plank. In the General Assembly of 1913, the Democrats had an overwhelming majority in each house. In his

inaugural address, delivered on January 13, the incoming Governor, Samuel M. Ralston, recommended the calling of a constitutional convention. On opening his campaign in 1912, Governor Ralston told the voters that he was personally in favor of a convention but that he had no authority to commit his party to that proposition. The Governor then reviewed the facts which in his judgment warranted the conclusion that the people generally demanded a convention and submitted the matter to the consideration of the General Assembly. During the session of 1913 bills providing for the calling of a constitutional convention were introduced in both Houses by members of all three parties. The successful measure was introduced in the Senate by Senator Stotsenburg and passed the Senate by a vote of 32-5 and the house by a vote of 66-8. This measure, which was the second of its kind ever adopted in this State under the present Constitution, and the first since 1859, provided for the submission to the electors, at the general election of 1914, of the question whether or not they were in favor of calling a constitutional convention. If a majority of the votes cast at the election were in favor of calling a convention, then a special election was to be held on the first Tuesday in March, 1915, to select delegates. At the election held on November 3, 1914, 235,140 votes were cast in favor of calling a convention and 338,947 votes were cast in opposition. The project was therefore defeated. The counties which cast a majority vote for a convention were Delaware, Elkhart, Fountain, Grant, Howard, Huntington, Lawrence, Madison, Marion, Sullivan, Vigo and Wells. All the other counties opposed the proposition.

In all attempts to call a constitutional convention heretofore recorded, the General Assembly has proceeded on the theory that it was necessary to obtain first of all an expression of popular opinion on the question. The Marshall Constitution of 1911 rather rudely disturbed this tradition. This procedure, is, in fact, not an essential prerequisite. The General Assembly is supposed to know the general sentiment of the people of the State and a referendum vote may, therefore, be wholly eliminated. This theory was embodied in a bill which Senator Will R. Wood introduced on February 21st as a substitute for Senator Stotsenburg's bill. This measure provided that a special election should be held on the second Monday of September, 1913, to elect delegates to a convention to form a new Constitution. The convention was to assemble on the first Monday in December, 1913.<sup>27</sup>

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27. Senate Journal, 68th Session, 1140.



At the session of 1913, in addition to submitting to the electors the question of calling a constitutional convention some twenty amendments were adopted and referred to the General Assembly of 1915. In the meantime, the question of calling a convention was more widely discussed; a non-partisan paper devoted to the cause was established; and a campaign of education was conducted. The proponents of a convention insisted that in 1914 the question of calling a convention was confused with the proposal to expend \$2,000,000 in the erection of a centennial memorial building which was also referred to the people at that time. Besides, the question of taxation, woman suffrage and the liquor problems were pressing for solution and they contended that if the proposition were fully elaborated and submitted to a popular vote a second time it would easily carry. The rejection of the Stotsenburg amendments in 1915 served to increase and accentuate this demand and at the session of that year a bill similar to the act of 1913 under which the question had been submitted in 1914 was introduced in both houses. Neither bill enlisted very much support. The House bill failed to pass on March 6 by a vote of 45-49, and a subsequent attempt to obtain a reconsideration of the vote failed. The Senate bill was never advanced beyond engrossment. With the rejection of this measure, the question of constitutional revision is just where it was in 1859. In their platform of July 21, 1916, the Progressive party again endorsed the calling of a convention. Neither the Republican nor the Democratic platform alluded to the subject. Meantime, the agitation out of doors has gone on and the demand for thorough-going revision, particularly in the cities, is undoubtedly increasing.

**Procedure in Adoption and Text of Wabash and Erie Canal Amendment, and Suffrage Amendments of 1880.**—Senate joint resolution No. 1 embodying the Wabash and Erie Canal Amendment was introduced in the Senate on January 6, 1871, by Mr. John Caven. It was read a first time and made the special order for January 12. On first reading only the title of the resolution is given (Senate Journal, 1871, p. 66). The entire afternoon of January 12 was consumed in the discussion of the amendment (Senate Journal, 1871, p. 131). On January 13, the amendment was again under consideration and was made a special order for January 17 (Senate Journal, 1871, p. 135). On January 17, the amendment was taken up for consideration (Senate Journal, 1871, p. 171), and the discussion was continued on Jan-

uary 18 when the amendment was adopted by a vote of 45-1 and was transmitted to the House (Senate Journal, 1871, p. 181). At no place in the Senate Journal is the amendment given; the full title is given on page 66, and the vote is recorded in full on page 183. On January 18 the resolution was reported to the House and the title is given in full (House Journal, 1871, p. 231). On January 19 the resolution was read a first time and made the special order for January 25 (House Journal, 1871, p. 271). The senate resolution and the various House resolutions on the same subject had been submitted to a select committee which returned a report on January 24 recommending the adoption of the Senate resolution. The report was concurred in and the Senate resolution was adopted by a vote of 93-0, seven members being absent on account of sickness (House Journal, 1871, p. 313). At no place in the House Journal is the resolution given in full. The title is given on pages 231 and 314 and the vote on final passage on page 314. On January 26, the Committee on Phraseology, arrangement of bills and enrolled bills reported that Senate Joint Resolution No. 1 was correctly and properly enrolled (Senate Journal, 1871, p. 283). The resolution was not approved by the Governor but was printed in the session laws of 1871 on page 67.

The special session of 1872 convened on November 13. This body had been elected at the general election of 1872 and since it was a different body from that which met in 1871 and adopted the original Wabash and Erie Canal Amendment, it was fully competent to take action on the Canal Amendment. In the meantime some doubt had arisen as to the validity of the proceedings connected with the adoption of the Amendment, since the Amendment had not been entered in full on the journals of either House. In his message to the General Assembly on November 14, 1872, the Governor reminded the legislature that the yeas and nays were called and recorded on the passage of the joint resolution in both houses; that the joint resolution had been duly enrolled, signed by the presiding officers of both houses, deposited in the office of the Secretary of State and was printed and published with the laws passed at that session. Under these circumstances, the Governor was "clear in the opinion that the omission to spread the amendment at large on the journals does not vitiate it." The provision which prescribed that the amendment should be entered on the journals, "if indeed it means that it shall be copied at full length, is, at the most, only directory and not mandatory, and conse-

quently the amendment, if passed by the present General Assembly and ratified by the people, will be valid as a part of the Constitution'' (Senate Journal, Special Session, 1872, p. 17). The opinion as expressed by the Governor prevailed with the General Assembly. The pending amendment was introduced in the House on November 14 as House joint Resolution No. 2; was considered as engrossed and put upon its final passage at once and was adopted by a vote of 97-0. The resolution and the vote on the passage thereof are given in full and the speaker formally "directed the same to be entered on the Journals'' (House Journal, 1872, p. 52). On November 18, the resolution was reported to the Senate (Senate Journal, 1872, p. 40), and referred to the Committee on the Judiciary (Senate Journal, 1872, p. 49). On December 3, the committee reported the resolution back to the Senate and recommended its adoption and the Senate concurred in the report (Senate Journal, 1872, p. 182). On December 9 the joint resolution passed the Senate by a vote of 34-0, and the resolution and the vote are both entered in full (Senate Journal, 1872, p. 281). The resolution was not signed by the Governor but is printed in the session laws of 1872, on page 137. By an act approved on January 28, 1873, the Canal Amendment was submitted to the electors at a special election to be held on February 18, 1873; the Governor and Secretary of State were required to ascertain and declare the result of the election; and if a majority of the votes cast were recorded in favor of the adoption of the amendment the Governor was required to issue his proclamation declaring the amendment a part of the Constitution (Laws, 48th Session, p. 83). By a joint resolution approved January 31, 1873, the Secretary of State was required to notify the voters of the approaching special election at which the Canal Amendment would be submitted for ratification. The notice was to be published in the Indianapolis Sentinel and the Indianapolis Journal (Laws, 48th Session, p. 240). The Governor's notification proclamation was issued on January 31, 1873 (Indianapolis Journal, February 1, 1873). The election was held on February 18, 1873. The aggregate number of votes cast in favor of the amendment in all of the counties except Pulaski and Scott, as certified to the Secretary of State, was 158,400; the total vote cast against the adoption of the amendment was 1,030. Accordingly on March 7, 1873, Governor Thomas A. Hendricks issued his proclamation declaring the amendment ratified and duly incorporated as a valid and operating part of the Constitution from and after March 7,



1873, to be designated as Section 7 of Article 10 (Indianapolis Journal, March 10, 1873). On March 8, the Governor likewise informed the General Assembly of the issuance of his proclamation (House Journal, 48th Session, p. 858).

The legality of the procedure and the sufficiency of the vote in the adoption of this amendment was never questioned. The official enumeration of voters which was taken in 1871 disclosed the fact that there were 378,871 voters in the State. At the election of 1872, held three months before the Canal Amendment was submitted to the people, there were 377,700 votes cast for Governor. Obviously there must have been as many voters in the State on February 18, 1873, as there were in 1871 and in November, 1872. On this assumption, it was necessary for the Canal Amendment to receive 189,436 votes, one more than half the total vote enumerated in 1871, or 188,851 one more than half the total vote polled for Governor in 1872. As a matter of fact the affirmative vote for the Canal Amendment fell 30,451 votes short of the least of these popular votes and hence according to the strict construction of the Constitution, that an amendment to be adopted must receive a majority vote of "the electors of the State", was not adopted. This theory, however, was never advanced. In the case known as *State v. Swift*, May term, 1880 (69 Ind. 505), the Supreme Court reviewed the various steps which had been taken in the adoption of the Canal Amendment, including the examination of the election returns by the Governor and Secretary of State, the declaration of the result of the election and the issuance of the proclamation by the Governor declaring the amendment ratified and duly incorporated in the Constitution. "The matter, therefore, having been decided and proclaimed, according to law, by the executive department, a co-ordinate branch of the government, has now become *res adjudicata*" (69 Ind. 513). In a dissenting opinion, Mr. Justice Niblack said of the Canal Amendment: "The conclusions reached as to the ratification of that amendment have been acquiesced in for more than seven years. The court admit that that amendment can not now be disturbed. In that I fully concur . . . ." However, he concurred for a different reason than that assigned by the court. The reason assigned by the court was that the Governor had issued his proclamation declaring the amendment in force. The reason assigned by Justice Niblack was "because a majority of votes, at a fair election, were cast in favor of it" (69 Ind. 537).

The Canal Amendment did not displace or amend any exist-

ing provision of the Constitution; it was an entirely new provision added to the existing instrument. It was appended to Article X which deals with the subject of finance and as there were already six sections in Article X, the Canal Amendment was designated as Section 7. The amendment as adopted was as follows:

*Sec. 7. No law or resolution shall ever be passed by the General Assembly of the State of Indiana that shall recognize any liability of this State to pay or redeem any certificate of stock issued in pursuance of an act entitled "An act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash & Erie Canal to Evansville," passed January 19, 1846, and an act supplemental to said act passed January 29, 1847, which by the provisions of the said acts, or either of them, shall be payable exclusively from the proceeds of the canal lands, and the tolls and revenues of the canal in said acts mentioned; and no such certificates of stocks shall ever be paid by this State.*

On January 6, 1877, Mr. M. Trussler introduced Senate Joint Resolution No. 2 embodying an amendment to Section 2 of Article II of the Constitution, requiring voters to reside in the township or precinct for 60 days and to be registered before acquiring the right to vote. The resolution was read the first time. Only the title of the resolution is given (Senate Journal, 1877, p. 37). On January 9 Mr. Trussler introduced Senate Joint Resolution No. 3 embodying an amendment to Section 14 of Article II of the Constitution, changing the date of the general election from the second Tuesday in October to the first Tuesday after the first Monday in November. The resolution was read the first time and referred to the Committee on the Judiciary. Only the title is given (Senate Journal, 1877, p. 59). On January 10 Mr. J. D. Sarnighausen introduced Senate Joint Resolution No. 5 proposing an amendment to Section 22 of Article IV of the Constitution, authorizing the General Assembly to enact laws grading the compensation of public officers in proportion to the population and the necessary services required. The resolution was read the first time and referred to the Committee on the Judiciary. Only the title is given (Senate Journal, 1877, p. 70). On January 17, Mr. Addison C. Harris introduced a resolution amending Section 6 of Article X, prohibiting cities, towns and townships from subscribing to the stock of private corporations. The resolution was read the first time and referred to the Judiciary Committee. Only the title of the resolution is given (Senate Journal, 1877, p. 109). On January 18, Mr. Charles H. Reeve intro-

duced Senate Joint Resolution No. 15 proposing an Amendment to Section 1 of Article VII relative to the judiciary. The resolution was read the first time and referred to the Committee on the Judiciary. Only the title is given (Senate Journal, 1877, p. 122). On January 29, Mr. Francis M. Dice introduced Senate Joint Resolution No. 17 proposing to strike out the negro colonization article. The resolution was read the first time and referred to the Committee on the Judiciary. Only the title is given (Senate Journal, 1877, p. 217). On February 5, the Judiciary Committee submitted a divided report. Both reports concurred in the recommendation that the original resolutions should be laid on the table; in place of the original resolutions, the majority of the committee recommended the adoption of nine other resolutions numbered consecutively from 1 to 9, inclusive. The first report of the minority of the committee reported substitute resolutions for the minority resolutions numbered 3, 5 and 6. Both reports were placed on the calendar. None of the proposed resolutions are given (Senate Journal, 1877, p. 278). On February 6, the second minority report was submitted, and recommended a substitute resolution for Resolution No. 1 as reported by the majority of the committee. This report was likewise placed on the calendar. The proposed substitute resolution is not given (Senate Journal, 1877, p. 284). On February 16 and 17 the Senate resolved itself into a Committee of the Whole to consider the proposed resolutions. Substitute No. 1 as proposed in the second minority report was adopted by the Committee of the Whole in lieu of Resolution No. 1 as reported by the majority of the committee; Resolutions Nos. 2, 3, 4, 5, 6, 7, and 9 as reported by the majority of the committee; and Resolution No. 8 as reported by the majority of the committee, with an amendment, were adopted by the committee and concurred in by the Senate. The text of the amendments is not given (Senate Journal, 1877, pp. 416, 418, 421). On February 26 Senate Joint Resolutions Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9 were read the second time and passed to third reading. Only the titles of the resolutions are given (Senate Journal, 1877, p. 566). On February 27, the amendments were taken up on third reading. Senate Joint Resolution No. 1 amended Section 2 of Article II. It struck out the word "white" where it occurred, thus conferring the right of suffrage on negroes and mulattoes; prescribed a residence of 60 days in the township and 30 days in the ward or precinct; and required a registration of voters if so provided by law. This resolution was designated as Amendment No. 1 and passed the Senate



by a vote of 39-4. Senate Joint Resolution No. 2 amended Section 5 of Article II, by striking out the whole section which provided that "no negro or mulatto shall have the right of suffrage." This resolution was designated as Amendment No. 2, and passed the Senate by a vote of 40-1. Senate Joint Resolution No. 3 amended Section 14 of Article II, by providing that all general elections should be held on the first Tuesday after the first Monday in November instead of the second Tuesday in October; that township elections might be held at such times as were provided by law; authorized the General Assembly to provide for the election of judges at special elections; and required the General Assembly to provide for the registration of all voters. This resolution was designated as Amendment No. 3, and passed the Senate by a vote of 39-2. Senate Joint Resolution No. 4 amended Sections 4 and 5 of Article IV by striking out the word "white" where it occurred, thus basing the enumeration of voters, taken every six years, and the apportionment of senators and representatives, made after each sexennial enumeration, on all male inhabitants of the State over the age of 21 years instead of all white males as formerly. This resolution was designated as Amendment No. 4, and passed the Senate by a vote of 41-1. Senate Joint Resolution No. 5 amended the 14th clause of Section 22 of Article IV, by authorizing the General Assembly to adopt special or local laws grading the compensation of public officers in proportion to population and the necessary services required. This resolution was designated as Amendment No. 5, and passed the Senate by a vote of 37-3. Senate Joint Resolution No. 6 amended Section 1 of Article VII. The original section provided that the judicial power of the State should be vested in a Supreme Court, circuit courts and inferior courts. The amendment struck out the word "inferior" and substituted the word "other." This made possible the creation of the appellate and superior courts. This resolution was designated as Amendment No. 6 and passed the Senate by a vote of 38-2. Senate Joint Resolution No. 7 amended Section 2 of Article VII, by fixing the number of supreme judges at not less than 5 nor more than 7, and providing that one-third of the membership of the court should retire biennially. This resolution was designated as Amendment No. 7, and passed the Senate by a vote of 41-3. Senate Joint Resolution No. 8 amended Section 6 of Article X by prohibiting cities, towns and townships from subscribing for stock in any company, or donating money or assuming the indebtedness of any company. This resolution was designated as Amendment

No. 8 and passed the Senate by a vote of 38-5. Senate Joint Resolution No. 9 amended Article XIII, relative to the settlement of negroes in the State and the colonization of such as were willing to emigrate, by striking out the whole article and inserting in lieu thereof the section fixing the municipal debt limit at 2 per cent. This resolution was designated as Amendment No. 9, and passed the Senate by a vote of 38-6. All of these resolutions and vote on final passage are given in full (Senate Journal, 1877, pp. 614-621).

On February 28 these resolutions were reported to the House and read the first time. Joint Resolutions Nos. 1, 2, and 3 were referred to the Committee on Elections; Joint Resolutions Nos. 4, 5, 6, 7, 8, and 9 were referred to the Committee on the Judiciary. Only the titles are given (House Journal, 1877, pp. 857, 876). On March 3 the Committee on Elections reported Joint Resolutions Nos. 1, 2 and 3 back to the House and recommended their adoption, and the report was concurred in.

Senate Joint Resolution No. 2, designated as Amendment No. 2, passed the House at once, March 3, by a vote of 78-2. Only the title of the resolution and the full vote are given (House Journal, 1877, p. 954).

On March 3 the Judiciary Committee reported Joint Resolution No. 5 back to the House and recommended its adoption and the report was concurred in and the resolution was read and laid on the table (House Journal, 1877, p. 972). On March 5 the House Journal of 1877, at page 985, records that a message was received from the Senate submitting to the House "for the signature of the speaker thereof" Senate Joint Resolutions Nos. 1, 3, 4, 5, 6, and 7. As has been shown above, these resolutions were submitted to the House for action thereon on February 28 and during the interim only one resolution, No. 2, had passed. Obviously this is an erroneous record.

Senate Joint Resolution No. 3, designated as Amendment No. 3, passed the House on March 5 by a vote of 78-0. The full text of the resolution and the vote are given (House Journal, 1877, p. 987).

Senate Joint Resolution No. 1 designated as Amendment No. 1 passed the House on March 5 by a vote of 81-2. The full text of the resolution and the vote are given (House Journal, 1877, p. 989).

Senate Joint Resolution No. 5, designated as Amendment No. 5, passed the House on March 5 by a vote of 79-2. The full text

of the resolution and the vote are given (House Journal, 1877, p. 990).

On March 5, the Judiciary Committee reported Senate Joint Resolution No. 7 back to the House and recommended its adoption, and the report was concurred in.

Senate Joint Resolution No. 7 designated as Amendment No. 7, passed the House on March 5 by a vote of 63-14. The full text of the resolution and the vote on final passage are given (House Journal, 1877, p. 991).

On March 5, the Judiciary Committee reported Senate Joint Resolution No. 4 back to the House and recommended its adoption and the report was concurred in.

Senate Joint Resolution No. 4, designated as Amendment No. 4, passed the House on March 5 by a vote of 71-8. The full text of the resolution and the vote on final passage are given (House Journal, 1877, p. 992).

On March 5, the Judiciary Committee reported Senate Joint Resolution No. 6 back to the House and recommended its adoption and the report was concurred in.

Senate Joint Resolution No. 6, designated as Amendment No. 6, passed the House on March 5 by a vote of 69-9. The full text of the resolution and the vote on final passage are given (House Journal, 1877, p. 994).

On March 5, the Judiciary Committee reported Senate Joint Resolution No. 8 back to the House and recommended its adoption and the report was concurred in.

Senate Joint Resolution No. 8, designated as Amendment No. 8 passed the House on March 5 by a vote of 57-19. The full text of the resolution and the vote on final passage are given (House Journal, 1877, p. 1016).

The regular session, the 50th of 1877, expired on March 5 before Senate Joint Resolution No. 9 had been reported back to the House from the Judiciary Committee; hence no definitive action had been taken thereon. On March 5, the Governor issued a proclamation convening a special session to meet on March 6 (House Journal, 1877, p. 1074). As the personnel of this body was unchanged and as none of the unfinished business lapsed, it was competent to take up the amendments on which no action had been taken. Accordingly, on March 13, the Judiciary Committee reported Senate Joint Resolution No. 9 back to the House and recommended its adoption and the report was concurred in.



Senate Joint Resolution No. 9, designated as Amendment No. 9, was read a third time on March 13, and put upon its final passage and failed, the vote being 35-40 (House Journal, 1877, p. 1216). According to the records, this resolution was never again taken up for consideration. However, on March 14, a message was received from the Senate submitting to the House "for the signature of the speaker thereof, the following . . . resolution, to-wit: Enrolled Joint Resolution No. 9, Senate of Indiana. A joint resolution proposing amendment to Article 13 of the Constitution." The text of the resolution is not given but the vote on third reading is recorded in full (House Journal, 1877, p. 1225). Later the same day the speaker announced that he had signed enrolled Senate Joint Resolution No. 9 (House Journal, 1877, p. 1229). On March 15 the Senate informed the House that the President of the Senate had signed enrolled Senate Joint Resolution No. 9, and the resolution is printed in the session laws at page 85.

None of these joint resolutions was signed by the Governor. Amendments Nos. 1, 2, 3, 4, 5, 6, and 7 are printed on pages 159-163 of the laws of the regular session of 1877; Amendment No. 9 is printed on page 85 of the laws of the special session of 1877; Amendment No. 8 is not given.

In his message of January 10, 1879, Governor Williams reminded the General Assembly of the pendency of the nine amendments, which, "having been agreed to by a majority of the members elected to each of the two houses, were entered upon their journals and referred to the body now constituted of yourselves" (House Journal, 1879, p. 31).

On January 9, 1879, the Senate adopted a resolution fixing January 14 for the consideration of the pending amendments (Senate Journal, 1879, p. 11). On January 14 the Senate adopted a resolution requesting the Secretary of State to furnish the Senate with the nine enrolled amendments (Senate Journal, 1879, p. 35). Later the same day the Senate resolved to take up the pending amendments for first reading at once, for second reading on January 15, and for third and final reading on January 16 and the Secretary of the Senate was sent to the Secretary of State's office to obtain the enrolled copies of the pending amendments (Senate Journal, 1879, p. 40). As soon as the enrolled amendments had been procured, the Lieutenant-Governor announced that they had been placed in his hands. The amendments were read in their numerical order, including Nos. 1, 2, 3, 4, 5, 6, 7, and 9.

Amendment No. 8 was not included. The full text of the amendments is given (Senate Journal, 1879, pp. 43-48). On January 15 the Lieutenant-Governor "directed the reading of the proposed amendments", and the eight amendments were read a second time. Only the title is given (Senate Journal, 1879, p. 55). On January 16 the amendments were taken up in order on third reading. Joint Resolution No. 1 was passed by a vote of 37-12; Joint Resolution No. 2 by a vote of 43-0; Joint Resolution No. 3 by a vote of 34-14; Joint Resolution No. 4 by a vote of 47-1; Joint Resolution No. 5 by a vote of 47-2; Joint Resolution No. 6 by a vote of 46-2; Joint Resolution No. 7 by a vote of 41-7; and Joint Resolution No. 9 by a vote of 48-0. Only the title and the full vote on final passage are given (Senate Journal, 1879, pp. 63-67).

On January 17, these resolutions were reported to the House, read the first time and made a special order for January 20 (House Journal, 1879, pp. 141, 145). On January 20 the consideration of the amendments was passed over and made the special order for January 23 (House Journal, 1879, pp. 153-155). On January 23 the special order was postponed until January 29 (House Journal, 1879, p. 204). On January 29 the special order was passed without action and the amendments were taken up on January 30. Joint Resolution No. 1 passed by a vote of 60-34; Joint Resolution No. 2 by a vote of 95-1; Joint Resolution No. 3 by a vote of 61-34; Joint Resolution No. 4 by a vote of 89-3; Joint Resolution No. 5 by a vote of 93-1; Joint Resolution No. 6 by a vote of 66-29; Joint Resolution No. 7 was rejected by a vote of 26-69; Joint Resolution No. 9 was passed by a vote of 81-11. The full text of each resolution and the vote on final passage are given (House Journal, 1879, pp. 273-287).

None of these resolutions was approved by the Governor; they are given in full in the session laws of the regular session of 1879 on pages 51-54.

By an act approved March 10, 1879, the seven amendments were submitted to the electors at the election to be held on the first Monday of April, 1880. The amendments were printed on separate ballots of blue paper and electors were required to vote on each proposed amendment separately. Within two months after the election the Secretary of State was required to determine the total vote cast and certify the same to the Governor and the Governor was required to immediately issue and publish his proclamation declaring the number of votes for and against each

amendment, and “if a majority of the electors shall thus ratify any of said amendments, the same shall be a part of the Constitution” (Laws, 51st Session, 25).

In conformity with the provisions of the foregoing act, the seven constitutional amendments were submitted to the electors at the regular spring election for township officers held on April 5, 1880. On April 28th, the Governor issued his proclamation declaring the vote cast on each amendment, which was as follows: (Secretary of State’s Report, 1888, p. 96).

Amendment No. 1, 169,479 votes for, 152,363 votes against;

Amendment No. 2, 177,542 votes for, 139,002 votes against;

Amendment No. 3, 174,400 votes for, 144,812 votes against;

Amendment No. 4, 176,320 votes for, 136,279 votes against;

Amendment No. 5, 181,887 votes for, 136,177 votes against;

Amendment No. 6, 175,612 votes for, 141,296 votes against;

Amendment No. 9, 176,981 votes for, 126,999 votes against;

The total number of votes cast for township officers at the same election was 380,771; the total number of electors in the State according to the official enumeration of 1877 was 451,028; and the total vote cast for Governor in 1876 was 434,006. The Constitution provides that an amendment to be ratified must receive the affirmative votes of a majority of the electors of the State. But how many electors were there in the State on April 5, 1880? Obviously, nobody knew. The only way to ascertain the exact number was to take a census of the male population entitled to vote. This was done in 1877, but during the three years which had elapsed, the population was increasing and there were doubtless more electors in the State in 1880 than in 1877. The strict enforcement of this provision of the Constitution is manifestly an impossibility. If, as a solution of the difficulty, the number of electors in the State be assumed to be equal to the last preceding official enumeration, then in 1880 it would require 225,515 affirmative votes to ratify an amendment to the Constitution; if the vote for Governor at the last preceding general election be taken as a criterion, it would require 217,004 affirmative votes; and if the vote cast at the general township election be taken as a criterion, then it would require 190,386 affirmative votes. The highest affirmative vote was cast for Amendment No. 5 and aggregated 181,887, and was 8,499 votes less than a majority of the votes cast at the spring election of 1880, 35,117 votes less than a majority of the votes cast for Governor in 1876, and 43,628 votes less than a majority of the electors enumerated in 1877.



Amendment No. 1, prescribing the residential qualifications of electors, was self-executing, and an attempt was made to enforce it at the municipal elections of May 4, 1880, on the theory that the amendment had been ratified by the electors and substantially declared in force by the Governor's proclamation declaring the vote on the amendments. A test case was instituted in New Albany, appealed to the Supreme Court and decided at the May term, 1880. In this case, which is known as *State v. Swift*, the Supreme Court was called upon to determine whether the amendments had been constitutionally adopted. The court held that "it requires a majority of the electors of the State" to ratify an amendment, but that "the whole number of votes cast at the election at which the amendment is submitted may be taken as the number of electors of the State." The amendments had "simply not been ratified and not been rejected"; the vote was "ineffectual for want of the constitutional majority." To assist the General Assembly in extricating itself from the dilemma, the court said that there was no reason why the General Assembly could not "re-submit the amendment to the electors of the State, under an amended act, such as experience may prove to be sufficient to present the question to the courts, if it ever should arise again" (69 Ind. 505).

Acting on the suggestion of the Supreme Court in the *Swift* case, the General Assembly by an act approved February 21, 1881, resubmitted the seven amendments to the electors at a special election to be held on March 14, 1881. The Secretary of State was required to determine the total vote cast for and against each amendment and the total number of electors who voted at the election and certify these facts to the Governor. The Governor was thereupon required to issue his proclamation declaring the number of votes cast for and against each amendment and the total number of votes cast at the election. If the total affirmative vote cast for any amendment was a majority of all the votes cast at the election, then the Governor was required to declare such amendment a part of the Constitution (Laws, 52d Session, p. 29). On February 21, the Governor issued an election notice (Secretary of State's Report, 1881, p. 148). The election was held on March 14 and 172,900 voters participated—207,871 less than voted at the township elections of 1880; 278,128 less than the official enumeration of voters in 1877; and 261,106 less than voted for Governor in 1876. The vote cast on each amendment was as follows:

Amendment No. 1, 123,736 votes for and 45,975 votes against;  
Amendment No. 2, 124,952 votes for and 42,896 votes against;  
Amendment No. 3, 128,038 votes for and 40,163 votes against;  
Amendment No. 4, 125,170 votes for and 42,162 votes against;  
Amendment No. 5, 128,731 votes for and 38,345 votes against;  
Amendment No. 6, 116,570 votes for and 42,434 votes against;  
Amendment No. 9, 126,221 votes for and 36,435 votes against;

Since it appeared that the number of votes cast for each amendment was greater than the number of votes cast against it and exceeded a majority of all the electors who voted at the election, the Governor, on March 24, 1881, issued his proclamation declaring the amendments in force (Secretary of State's Report, 1881, p. 153).

Below is given the text of the original section of the Constitution as adopted in 1851 followed by the same section as amended in 1881.

## ARTICLE II.

### SUFFRAGE AND ELECTION.

Section 2 as originally adopted in 1851 was as follows:

Sec. 2. In all elections, not otherwise provided for by this Constitution, every white male citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during the six months immediately preceding such election; and every white male, of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside.

Section 2 as amended in 1881 is as follows:

*Sec. 2. In all elections not otherwise provided for by this Constitution, every male citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election; and every male of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and shall have declared*

*his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside, if he shall have been duly registered according to law.*

Section 5 as originally adopted in 1851 was as follows:

Sec. 5. No negro or mulatto shall have the right of suffrage.

By the amendment of 1881 this section was stricken out of the Constitution.

Section 14 as originally adopted in 1851 was as follows:

Sec. 14. All general elections shall be held on the second Tuesday in October.

Section 14 as amended in 1881 is as follows:

*Sec. 14. All general elections shall be held on the first Tuesday after the first Monday in November, but township elections may be held at such time as may be provided by law: Provided, That the General Assembly may provide by law for the election of all judges of courts of general or appellate jurisdiction, by an election to be held for such officers only, at which time no other officer shall be voted for; and shall also provide for the registration of all persons entitled to vote.*

## ARTICLE IV.

### LEGISLATIVE.

Section 4 as originally adopted in 1851 was as follows:

Sec. 4. The General Assembly shall, at its second session after the adoption of this Constitution, and every sixth year thereafter, cause an enumeration to be made of all the white male inhabitants over the age of twenty-one years.

Section 4 as amended in 1881 is as follows:

*Sec. 4. The General Assembly shall, at its second session after the adoption of this Constitution, and every sixth year thereafter, cause an enumeration to be made of all the male inhabitants over the age of twenty-one years.*

Section 5 as originally adopted in 1851 was as follows:

Sec. 5. The number of senators and representatives shall, at the session next following each period of making such enumeration, be fixed by law, and apportioned among the several counties, according to the number of white male inhabitants, above twenty-one years of age in each: *Provided, that*



the first and second elections of members of the General Assembly, under this Constitution, shall be according to the apportionment last made by the General Assembly, before the adoption of this Constitution.

Section 5 as amended in 1881 is as follows:

*Sec. 5. The number of senators and representatives shall, at the session next following each period of making such enumeration, be fixed by law, and apportioned among the several counties, according to the number of male inhabitants, above twenty-one years of age, in each: Provided, That the first and second elections of members of the General Assembly, under this Constitution, shall be according to the apportionment last made by the General Assembly before the adoption of this Constitution.*

As originally adopted in 1851, the 14th clause of Section 22 prohibited the General Assembly from passing special and local laws in relation to fees and salaries, and was as follows:

Section 22, Clause 14. In relation to fees or salaries;

As amended in 1881, this clause prohibited the General Assembly from passing local or special laws in relation to fees and salaries, but authorized them to enact laws grading the compensation of public officers in proportion to the population and the necessary services required, and is as follows:

*Sec. 22, Clause 14. In relation to fees or salaries; except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required;*

## ARTICLE VII.

### JUDICIAL.

Section 1 as originally adopted in 1851 was as follows:

Section 1. The judicial power of the State shall be vested in a Supreme Court, in circuit courts, and in such inferior courts as the General Assembly may establish.

Section 1 as amended in 1881 is as follows:

*Section 1. The judicial power of the State shall be vested in a Supreme Court, in circuit courts, and in such other courts as the General Assembly may establish.*

## ARTICLE XIII.

## NEGROES AND MULATTOES.

Sections 1, 2, 3, and 4 as originally adopted in 1851 were as follows:

Section 1. No negro or mulatto shall come into, or settle in, the State, after the adoption of this Constitution.

Sec. 2. All contracts made with any negro or mulatto coming into the State, contrary to the provisions of the foregoing section, shall be void; and any person who shall employ such negro or mulatto, or otherwise encourage him to remain in the State, shall be fined in any sum not less than ten dollars, nor more than five hundred dollars.

Sec. 3. All fines which may be collected for a violation of the provisions of this article, or of any law which may hereafter be passed for the purpose of carrying the same into execution, shall be set apart and appropriated for the colonization of such negroes and mulattoes, and their descendants, as may be in the State at the adoption of this Constitution, and may be willing to emigrate.

Sec. 4. The General Assembly shall pass laws to carry out the provisions of this article.

In 1881, the entire four sections were stricken out and the section relative to municipal debt limit inserted, as follows:

*Section 1. No political or municipal corporation in this State shall ever become indebted, in any manner or for any purpose, to any amount, in the aggregate exceeding two per centum on the value of taxable property within such corporation, to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness, and all bonds or obligations, in excess of such amount, given by such corporations, shall be void: Provided, That in time of war, foreign invasion, or other great public calamity, on petition of a majority of the property owners, in number and value, within the limits of such corporation, the public authorities, in their discretion, may incur obligations necessary for the public protection and defense, to such an amount as may be requested in such petition.*

**Critical Note on the Amending Process of the Constitution.—**By far the most controverted of all constitutional questions in this State is that which involves the correct construction and interpretation of Article XVI which prescribes the method of adopting constitutional amendments. This Article has been con-

strued by the Supreme Court in the cases called *State v. Swift* (1880), *In re Denny* (1900) and *In re Boswell* (1913). But the opinions of the court have been so conflicting that it is impossible to speak with assurance on some of the more important points. In this note an attempt has been made to give an interpretation of this article as construed by the Supreme Court, the General Assembly, the Governor and the electors. The full text of the Article is as follows:

## ARTICLE XVI.

### AMENDMENTS.

Section 1. Any amendment or amendments to this Constitution may be proposed in either branch of the General Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals and referred to the General Assembly to be chosen at the next general election; and, if in the General Assembly so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such amendment or amendments to the electors of the State, and if a majority of said electors shall ratify the same, such amendment or amendments shall become a part of this Constitution.

Sec. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately; and while such an amendment or amendments which shall have been agreed upon by one General Assembly shall be awaiting the action of the succeeding General Assembly, or of the electors, no additional amendment or amendments shall be proposed.

*Nature of Amendments.* An amendment is a modification, excision or addition of a provision of the Constitution. It may be entirely new and supplemental material like the Wabash and Erie Canal amendment of 1873, which was wholly unlike any existing provision of the Constitution; it may be a modification of an existing provision, such as the change in the residential qualifications for suffrage and the date of holding general elections, adopted in 1881; it may consist of the complete excision of a portion of the



Constitution without incorporating any substitute in place of the deleted provision, such as the amendment of 1881 striking out the fifth section of the second article providing that "no negro or mulatto shall have the right of suffrage"; or it may consist of striking out certain existing provisions and inserting other provisions in lieu thereof; thus, in 1881, the article prescribing negro disabilities was entirely stricken out and the provision fixing the municipal debt limit at 2% inserted.

*Number of Amendments Proposed.* Any number of amendments may be proposed by any General Assembly competent to act; in 1871, one amendment was proposed; in 1913, twenty-two amendments were proposed. It would be possible in this way to amend every section of the Constitution at one time. The term "proposed" is doubtless intended to be used in its technical sense of adopted or agreed to rather than introduced. The Constitution is clear that amendments may originate in either House.

*Adoption by Majority.* Any amendment must receive 26 votes in the Senate and 51 votes in the House at both sessions at which it is under consideration. There have been very few close votes on amendments; the Wabash and Erie Canal amendment was adopted unanimously, and the suffrage amendments of 1881 by practically unanimous majorities.

*Entry of Yeas and Nays.* The names of the senators and representatives who vote on the adoption of a proposed amendment must be set out on the journals in such manner as to indicate whether they voted in favor of or against the passage of the measure. No case has ever arisen where the validity of an amendment was questioned for failure to comply with this requirement.

*Entry on the Journals.* The Constitution provides that if any amendment is . . . proposed and agreed to by any General Assembly it "shall . . . be entered on their journals", i.e., on the journals of the two houses. The language of the Constitution does not specify whether the proposed amendment shall be entered in full or by title only. This provision of the Constitution has never been judicially construed but the interpretation placed thereon by the executive and legislative departments of the government and by the people in 1873 leads to the conclusion that if the proposed amendment is clearly indicated by title and if the official enrolled copies are properly signed by the presiding officers of the two houses and filed with the Secretary of State, the amendment is properly pending and subject to action by the next succeeding General Assembly. The necessity of enter-

ing a proposed amendment in full on the journals of the two houses had, apparently, never occurred to the General Assembly until 1872 when the Wabash and Erie Canal Amendment came before the special session of that year for re-adoption and confirmation, although an unsuccessful Canal amendment proposed in the House on January 5, 1871, provided that "the said amendment shall be entered on the Journals of each house of the present legislature."<sup>28</sup> The Canal amendment which was finally agreed upon in 1871 is not given in full at any place in either the House or Senate journal. The full title of the resolution occurs once in the Senate journal and twice in the House journal. The resolution is printed in full at page 67 of the session laws of 1871. As the special session of 1872 approached, doubts were expressed as to whether the constitutional requirement had been fully complied with in properly presenting the Canal amendment for subsequent action, since the measure had not been spread in full on the journals of both houses. The impatience and anxiety of the chief executive, the General Assembly and the electorate to advance this measure to speedy maturity led to the first official construction and interpretation of this provision of the Constitution. This interpretation was doubtless tinged by the pressing exigencies of the attendant circumstances, and while rational and logical in its conclusions, was deprived of half its force by the scrupulous care which both houses subsequently observed in entering the amendment in full on the journals of the special session. The executive interpretation of this provision was set forth by Governor Baker in his message to the General Assembly on November 14, 1872. The Governor informed the legislature that the yeas and nays were called and recorded on the passage of the joint resolution in both houses; that the joint resolution had been duly and correctly enrolled and signed by the presiding officers of both houses, and deposited in the office of the Secretary of State; and that it had been printed and published with the laws passed at that session. This procedure seemed sufficient to the Governor and he therefore assured the General Assembly that he was "clear in the opinion that the omission to spread the amendment at large on the journals does not vitiate it." The constitutional provision requiring that an amendment shall be entered on the journals "if indeed it means that it shall be copied at full length, is, at the most, only directory and not mandatory, and consequently the

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28. House Journal, 1871, p. 14.

amendment, if passed by the present General Assembly and ratified by the people, will be valid as a part of the Constitution.” The opinion expressed by the Governor, a Republican, was fully confirmed by the General Assembly, irrespective of parties, as the amendment passed by a unanimous vote in both houses; subsequently, on February 18, this dubious procedure was approved by the electors who ratified the amendment at a special election by a vote of 158,400 to 1,030; and on March 7, 1873, Thomas A. Hendricks, a Democrat, who had succeeded to the governorship in January, issued his proclamation declaring the amendment in force as a valid and fully operating part of the Constitution.<sup>29</sup> The General Assembly of 1872 which re-adopted the Canal amendment of 1871 and thereby approved the Governor’s reasoning that the provision requiring a constitutional amendment to be spread in full on the journals of both houses was “only directory and not mandatory”, cast some suspicion on the soundness of their own logic by exercising great care in ordering that the amendment be entered in full on the journals of both houses. The speaker of the House, to make assurance doubly sure, formally “directed the same to be entered on the Journals.” The resolution is also printed in full in the session laws of 1872 at page 137. The legality and sufficiency of this procedure, as has been shown, was universally acquiesced in by the electorate, approved by two governors and unanimously approved by the General Assembly. Seven years later, this procedure was inferentially approved by the Supreme Court in the celebrated case called *State v. Swift* which was decided at the May term, 1880. Although this point was not before the court for adjudication at that time, the majority opinion, reviewing the various steps which had been taken in the adoption of the Canal amendment, not including, however, the failure to spread the amendment in full on the journals in 1871, said: “The matter, therefore, having been decided and proclaimed, according to law, by the executive department, a co-ordinate branch of the government, has now become *res adjudicata*.” In a dissenting opinion, Mr. Justice Niblack concurred in this conclusion although for a different reason than that assigned by the court. “The conclusions reached as to the ratification of that amendment have been acquiesced in for more than seven years. The court admits

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29. It is needless to state that the promulgation of this proclamation by Governor Hendricks was entirely a ministerial and mandatory act exercised without discretion on his part.



that that amendment can not now be disturbed. In that I fully concur . . . . .”

In 1881, seven amendments to the Constitution were adopted. These amendments were first adopted by the General Assembly of 1877 and confirmed two years later by the General Assembly of 1879 and submitted to the electors. These seven amendments are all entered in full on the House journal, and all but one are entered in full on the Senate journal of 1877; all seven are printed in the session laws of that year. In his message to the General Assembly of 1879, Governor Williams, on January 10, reminded the legislature that these amendments had been “entered upon their journals” and were properly pending consideration. The seven amendments were entered in full on the journals of both the House and Senate of 1879 and were also printed in the session laws. With one slight omission in 1877, doubtless an oversight, the full entry provision of the Constitution was fully complied with.

In 1883, the question of the precise meaning of this provision of the Constitution was before the General Assembly and was threshed out with considerable care. However, the controversy was so completely adulterated by political considerations that the conclusions arrived at are of doubtful value. In 1881, after the final approval of the seven amendments first submitted in 1880, four additional amendments were adopted and submitted to the General Assembly of 1883 for readoption. None of these amendments were entered in full on the journals but they were printed in the session laws. Among these amendments, one provided for woman suffrage and a second for State-wide prohibition. Both were approved by the Republicans and both were disapproved by the Democrats. Hence an unusual amount of interest was aroused relative to the action to be taken thereon. In the canvass for the election of senators and representatives to the General Assembly of 1883, the point was not raised that proper steps had not been taken by the General Assembly of 1881 to enable the General Assembly of 1883 to consider the amendments. After the election, however, that point was raised in the public press and it was asserted that the proposed amendments were not really pending since they were not entered at length in the journals of the two Houses. In his message to the General Assembly on January 5, 1883, Governor Porter set forth that the titles of the several joint resolutions had been set out on the journals; that enrolled copies, signed by the presiding officers of the two houses, had been filed

in the office of the Secretary of State; and that the resolutions were printed in full in the session laws of 1881. The point, he said, had never been settled by any judicial decision, but that an executive construction had been given by Governor Baker in 1872. He cited the details of this construction with approval and added that "in a case where the point was urged that an act was not in force because no entry of the yeas and nays on its passage appeared in the journals, the Supreme Court held that the signatures of the presiding officers were conclusive evidence of the passage." In the canvass during the campaign many senators and representatives publicly pledged themselves, if elected, to vote at the session of 1883 to submit the amendments to the electors, and without expressing any opinion on the merits of the amendments, the Governor expressed the belief that "pledges upon which electors were induced to vote for gentlemen holding seats in either of the two houses . . . will not be disregarded except for overwhelming reasons." In the General Assembly, it was frankly asserted that the amendments were to be defeated "upon a clerical error" and "upon some technical ground" (Brevier Report, 1883, p. 14). There was great "intensity of feeling shown on both sides." After considerable discussion, each house adopted a resolution instructing the Judiciary Committee to examine the journals and report whether there were any amendments pending. The reports were submitted on January 19. Three reports were submitted by the House committee. The first report contended that no amendments were pending but assigned no reasons; the second and third reports found that all four amendments were properly pending. Two reports were submitted in the Senate. The majority report contended that no amendments were pending. An examination of the journals disclosed that the amendments were under consideration in both houses and appeared to have been "in some form agreed to", but there was no entry of the resolutions on either journal. The minority report was very elaborate, giving the detailed procedure in the adoption of the amendments, stating that they were published in full with the session laws, but that they were not spread at length upon the journals of the two houses. They therefore concluded that the requirements of the Constitution had been "substantially complied with" and that the several resolutions were "duly and legally" before the General Assembly of 1883.

In the discussion of this question, which consumed several days, the General Assembly proceeded on the following facts which

were substantially agreed upon: The amendments in question were properly proposed, entered upon the journals by title and number, agreed to by a majority of the members elected to each house of the General Assembly; the yeas and nays were properly recorded; the resolutions were properly enrolled and authenticated by the presiding officers of the two houses; the resolutions were properly deposited in the office of the Secretary of State; the resolutions were not entered at full length on the journals of either house (Brevier Report, 1883, p. 108). The only point in controversy was the meaning of the expression "entered on their journals." Did this mean entered at full length giving the complete and exact text of the resolution embodying the amendment; or entered by title only? The discussion was extensive and it was finally decided by a party vote that the amendments were properly pending, a decision which is of little value. One point which was substantially agreed upon is of importance. Both houses proceeded on the theory and understanding that the decision of the General Assembly on the questions whether the amendments had been "entered" on the journals and "referred" to the succeeding General Assembly in conformity with the Constitutional requirement, was a legislative question; the decision of the General Assembly was final and that decision was not subject to judicial review (Brevier Report, 1883, pp. 15, 50). In 1913, the Stotsenburg amendments as finally adopted were entered in full on the House journals but they do not appear on the Senate journals and the question was again raised in 1914 whether the amendments had been "entered" on the journals in compliance with the constitutional requirement: Obviously, the only answer to this question is to cite the Wabash and Erie Canal amendment precedent and the further precedent, laid down in 1883, that if the second General Assembly called to act on amendments alleged to be pending decides that the amendments are legally pending, then all subsequent procedure as to that point is valid.

*Reference to Succeeding General Assembly.* The Constitution provides that if an amendment is agreed to by one General Assembly, it shall be "referred to the General Assembly to be chosen at the next general election", but there is nothing to indicate whether the reference shall be formal or otherwise. The Wabash and Erie Canal amendment as adopted in 1871 contained a proviso which constituted a formal reference of the amendment to the succeeding General Assembly. This provision directed that "the foregoing joint resolution be, and the same is hereby referred to the



General Assembly . . . to be chosen at the general election to be held on the second Tuesday in October in the year of our Lord one thousand eight hundred and seventy-two." The amendments of 1881 contained no such provision. Hence the opponents of the measures claimed that the amendments had not been "referred" to the General Assembly of 1883. In his message to the General Assembly of 1883, Governor Porter said: "The Constitution is silent respecting the manner in which a proposed amendment shall be referred from the first to the second General Assembly. The main object, no doubt, is to get it before the second Assembly. If the genuine resolution passed comes before the second Assembly, and is acted upon, the object of a reference would seem to have been attained, and the purpose of the framers of that instrument to have been carried out." This question was decided in the same manner and at the same time that the question of entry on the journals was determined. Of the subsequent amendments adopted by two succeeding General Assemblies, all contain an express provision referring them to the next succeeding General Assembly and this is doubtless the proper form. It should be observed that if an amendment is adopted by one General Assembly, either at a regular or special session, it may be readopted by the next succeeding General Assembly at a regular or special session. The only requirement is that an election shall intervene so that the second General Assembly shall consist of newly elected members. The Wabash and Erie Canal amendment was adopted by the regular session of 1871; the general election occurred in November, 1872; on November 14, 1872, a special session was convened and since it was a different body from that which assembled in 1871 it proceeded to re-adopt the pending amendment.

*Submission to Electors.* Amendments which have been adopted by two succeeding General Assemblies are embodied in an act, duly passed by the legislature and signed by the Governor, and are submitted at any general or special election. The amendments are invariably indicated by number and some other brief appropriate designation on a separate ballot. The Wabash and Erie Canal amendment was submitted at a special election on February 18, 1873; the suffrage amendments were first submitted at the general spring election of township officers in 1880, but having failed of adoption they were re-submitted at a special election held on March 14, 1881; the lawyer amendment has always been submitted at a general election.

*Re-Submission.* In 1880, when the suffrage amendments failed of adoption, the General Assembly, in compliance with a plan proposed in *State v. Swift*, re-submitted the amendments by a new act and without readopting the amendments *de novo*. In all other cases when an amendment has not secured enough votes to insure its adoption, even though it was considered pending, it has been re-adopted by two succeeding General Assemblies. The constitutional duty of the General Assembly is discharged according to the *Boswell* case when there has been one submission. A resubmission is not required.

*Majority of the Electors.* The question, what constitutes a majority of the electors, has been the most controverted of all questions involved in the amendment of the Constitution. The plain language of the Constitution would seem to imply that a majority of the electors means one more than half of the persons who are qualified and entitled to vote. The only way of ascertaining how many electors there are is to take a census. This is done every six years and is used to determine the apportionment of senators and representatives. For all practical purposes, it would be necessary to assume that during the intervals between sexennial enumerations the number of electors had not increased, and if a constitutional amendment were submitted four years after an enumeration had been taken, to declare it adopted if it obtained a vote equal to one more than half the number of electors enumerated at the last preceding enumeration. The difficulty of applying this standard has led the court to say in the *Swift*, *Denny* and *Boswell* cases that for practical purposes, the number of electors in the State shall be assumed to be the number who actually vote at a given election. No amendment has ever been approved by a majority of the electors of the State. The *Wabash* and *Erie Canal* amendment was approved by 158,400 electors. But we know that there were at least 378,000 electors in the State at that time. According to a strict construction of this provision, the amendment should have received at least 189,000 votes. The total number of votes cast at the election was 159,430 and of this number an overwhelming majority was cast for the amendment. The same was true of the suffrage amendments which were submitted at a special election in 1881. We may, therefore, say that if an amendment receives a majority of the votes cast at the election at which it is submitted it is considered adopted.

*Pendency of Amendments.* In 1881, the Supreme Court held

that if an amendment failed to receive a majority of the votes cast at the election at which it was submitted but if more votes were cast in favor than in opposition to it, it was neither adopted nor rejected but was pending and therefore obstructive of the introduction of further amendments. That reasoning prevailed until 1900 when the Denny case held that if an amendment was voted on and failed to receive a majority of the votes cast at the election at which it was submitted that it not only had not been ratified but had been defeated and rejected, and this reasoning has since been confirmed in the cases called *In re Boswell* and *Ellingham v. Dye*.

*Incorporation of Amendment in Constitution.* Amendments which have been ratified by a majority of the electors are formally incorporated in the Constitution by a proclamation of the Governor, who names the date when the amendment shall take effect.

*Withdrawal of Amendment from Consideration.* Only one attempt has ever been made to withdraw an amendment from consideration after it had been adopted by two succeeding General Assemblies and voted upon by the people but when it failed to secure sufficient votes to insure its ratification. Governor Gray recommended this plan to the General Assembly of 1881 after the Swift case decided that the amendments had not been adopted. In 1913, Senator Stotsenburg introduced such a measure to withdraw the lawyer amendment from consideration. The resolution passed the Senate but before it could be acted upon by the House the Boswell case disposed of the amendment by the declaration that it was not pending, and it also laid down the rule that a General Assembly may formally withdraw an amendment from consideration.

*Form of Amendments.* An amendment may be embodied in a bill, a joint resolution or a concurrent resolution. All the amendments which have ever been adopted were embodied in resolutions; the Wabash and Erie Canal amendment was embodied in a joint resolution and the amendments of 1881 in concurrent resolutions. In 1867 a select committee of the Senate, on instructions, reported that either a joint or a concurrent resolution was valid. In 1855, when a series of resolutions were introduced in the House embodied in a bill, the Judiciary Committee reported that a joint resolution was the proper form for amendments and the general practice of the General Assembly has undoubtedly borne out that assertion. A measure, such as a bill or joint resolution may contain any number of amendments.



*Amendment of Amendment.* It may be stated with assurance that a proposed amendment may undergo any amount of amendment in either house of the first General Assembly which has it under consideration, but that not even the slightest amendment may be made by the second General Assembly. It must pass precisely as it is referred.



Cession of Northwest Territory and  
Organization of Territorial  
Government.





## VOLUME I.

### PART I.

#### CESSION OF THE NORTHWEST TERRITORY TO THE UNITED STATES AND THE ORGANIZATION AND DEVELOPMENT OF THE TERRITORIAL GOVERNMENT, COMPRISING THE PERIOD FROM 1780 TO 1816.

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The public domain comprised in the district subsequently known as the Northwest Territory was claimed originally by Connecticut, Massachusetts, New York, and Virginia. After a prolonged controversy, and in response to the recommendations of Congress, this territory was ceded to the United States Government by the voluntary action of the claimant states between 1784 and 1786. As soon as the United States Government had acquired possession of this territory it became necessary to establish some form of political organization. This was done by the Ordinance of Government of April 23, 1784; and although the political agencies and civil institutions authorized by this Ordinance were never created, it continued to be the constitution of the Territory until it was superseded by the famous Ordinance of July 13, 1787. The Ordinance of 1787, and the Federal statutes designed to amend and supplement it, continued to be the fundamental instrument of government of Indiana Territory until they were superseded by the Constitution of 1816. These amendatory and supplemental statutes were necessary to adapt the Ordinance of 1787 to the Federal Constitution which became operative in 1789, two years after the adoption of the Ordinance. Moreover, it became necessary to provide for the printing, distribution and repeal of Territorial laws; to prescribe more fully the official duties of the territorial secretary; to determine the personnel, define the jurisdiction and fix the sessions of the territorial court; to provide a territorial seal; and to prescribe the residential qualifications of territorial judges. In addition, the suffrage, which had been greatly restricted, was constantly broadened. Not only were citizens, formerly denied the right of suffrage, permitted to vote, but the number of elective officers was increased to include, particularly, legislative counsellors and the delegate to

Congress. Meantime, smaller territories had been created within the District. In 1800, the District was divided into Ohio and Indiana Territories; in 1805, Michigan Territory was created; and in 1809, Illinois Territory. The creation of these three neighboring territories reduced Indiana Territory to substantially its present dimensions. The documents constituting Part I are designed to explain and illustrate the anatomical structure and the progressive development of the government of the Territorial Period.

#### **1. Congress Recommends Cession of Western Lands (September 6, 1780).**

During the Revolutionary War there was a serious and prolonged controversy among the original thirteen states concerning the ownership, control and ultimate disposition of the wild and unsettled lands situated west of the Appalachian Mountains. Connecticut, Georgia, Massachusetts, New York, North Carolina, South Carolina and Virginia claimed these lands chiefly, but not wholly, by virtue of the sea-to-sea grants of their colonial charters. The other six states, having no western possessions, vehemently asserted that Congress either had lawful authority over this territory, or should be given such authority for the public good; that since this imperial domain had been won from Great Britain and the Indians "by the blood and treasure of all," it ought, therefore, "to be a common estate, to be granted out on terms beneficial to the United States," and should "be parcelled out by Congress into free, convenient, and independent governments . . ." In conformity with this doctrine, the six landless states, led by Maryland, Delaware and New Jersey, insisted that the western limits of those states which claimed territory extending to the Mississippi or the South Sea should be fixed, and that the residue of such territory should be relinquished and quit-claimed to the United States. The landed states, under the leadership of Virginia, whose western possessions were most extensive, were naturally disinclined to surrender the advantages which the possession of an extensive territory was supposed to confer. The leading statesmen of Maryland likewise believed that the possession of these western lands would enable Virginia to replenish her treasury, reduce her taxes, and thereby attract settlers from the neighboring commonwealths which would be placed at a serious economic disadvantage. After an animated and fruitless discussion of this perplexing land question, the delegates who framed the Articles of Confederation incorporated a clause therein providing that "no state shall be deprived of territory for the benefit of the United States." With this provision the Articles were adopted by Congress and submitted to the several states for ratification on November 15, 1777. By February 22, 1779, all of the states had ratified the Articles except Maryland, although both New Jersey and Delaware submitted resolutions in which they strenuously protested against that provision of the Articles which secured to the landed states the undisturbed possession of their western territories. On May 21, 1779, Maryland categorically instructed her delegates not to sign the Articles until her demands were complied with. As the Articles, by their own provisions, did



not become operative until ratified by all the states, the adoption of the proposed government was indefinitely postponed. The universal apprehension and discomfort aroused by this precarious state of affairs was further aggravated by the fact that some of the landed states had opened land offices, made private grants, granted bounties and had otherwise provided for the disposition of their western lands. Yielding to the unmistakable symptoms of discontent aroused by this fresh grievance, Congress, by a vote of eight states to three, passed a resolution on October 30, 1779, requesting the states to discontinue the practice of issuing warrants for unappropriated lands during the continuance of the war, and urging Virginia to reconsider a recent act passed by her general assembly providing for opening a land office. New York, whose western claims were most indefinite, was the first state to respond to this recommendation. On March 7, 1780, her delegates presented an act in Congress, which had been adopted on February 19, by the terms of which they were authorized to limit and restrict the western boundaries of the state in such manner as they might deem expedient, and cede the remainder to the United States for their common use and benefit. On September 6, 1780, Congress adopted the following resolution, the purpose of which was to emphasize the indispensable necessity of a liberal surrender by the landed states of their western territory in order to secure the establishment of the federal union on a permanent basis acceptable to all its members, and to induce Maryland to sign the Articles of Confederation.

[*Journal of Congress*, XVII, 806<sup>1</sup>].

Congress took into consideration the report of the committee to whom were referred the instructions of the general assembly of Maryland to their delegates in Congress, respecting the articles of confederation, and the declaration therein referred to, the act of the legislature of New York on the same subject, and the remonstrance of the general assembly of Virginia; which report was agreed to, and is in the words following:

“That having duly considered the several matters to them submitted, they conceive it unnecessary to examine into the merits or the policy of the instructions or declaration of the general assembly of Maryland, or of the remonstrance of the general assembly of Virginia, as they involve questions, a discussion of which was declined on mature consideration, when the articles of confederation were debated; nor, in the opinion of the committee, can such questions be now revived with any prospect of conciliation; that it appears more advisable to press upon these states which can remove the embarrassment respecting the western country, a liberal surrender of a portion of their territorial claims, since they cannot be preserved entire without endangering the

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1. *Journals of the Continental Congress, 1774-1789*. Edited from the Original Records by W. C. Ford, 1906.

stability of the general confederacy; to remind them how indispensibly necessary it is to establish the federal union on a fixed and permanent basis, and on principles acceptable to all its respective members; how essential to public credit and confidence, to the support of our army, to the vigour of our councils and success of our measures, to our tranquility at home, and our reputation abroad, to our present safety and our future prosperity, to our very existence as a free, sovereign and independent people; that they are fully persuaded the wisdom ~~and magnanimity of the patriotic legislators of those states will on an occasion of such vast magnitude, prompt them to prefer the general security to local attachment, and the permanency of the confederacy to an unwieldy extent of their respective limits, of the respective legislatures~~ will lead them to a full and impartial consideration of a subject so interesting to the United States, and so necessary to the happy establishment of the federal union; that they are confirmed in these expectations by a review of the beforementioned act of the legislature of New York, submitted to their consideration; that this act is expressly calculated to accelerate the federal alliance, by removing, as far as it depends on that State, the impediment arising from the western country, and for that purpose to yield up a portion of territorial claim for the general benefit; ~~an example which in the opinion of your committee deserves applause, and will produce imitation,"~~ Whereupon,

*Resolved*, That copies of the several papers referred to the committee be transmitted, with a copy of the report, to the legislatures of ~~Virginia, North Carolina and Georgia~~, the several states, and that it be earnestly recommended to those states who have claims to the western country, to pass such laws, and give their delegates in Congress such powers as may effectually remove the only obstacle to a final ratification of the articles of confederation; and that the legislature of Maryland be earnestly requested to authorize their delegates in Congress to subscribe the said articles; ~~and that a copy of the aforementioned remonstrance from the assembly of Virginia and act of the legislature of New York, together with a copy of this report, be transmitted to the said legislature of Maryland.~~<sup>2</sup>

## 2. Virginia Recommendation Relative to Disposition of Ceded Western Territory (September 6, 1780).

The adoption of the foregoing resolution of September 6 naturally aroused

2. The parts stricken out were contained in the original resolution as reported to Congress but were deleted on final consideration prior to adoption.

the apprehension of the landed states, particularly Virginia, which had expended a goodly sum of money in subverting British authority in the northwest. Moreover, the recommendations of Congress had inspired considerable speculation as to the ultimate disposition of the western territory by the federal government, after the cessions had been formally consummated. Accordingly, the Virginia delegates presented a motion for the consideration of Congress which is remarkable for the fact that it manifested a disposition on the part of the landed states to yield to the intercessions of Congress, and thus terminate the controversy which had resulted in an *en passe*; and it is likewise the earliest adumbration of the territorial policy of the United States.

[*Journals of Congress, XVII, 808.*]

A motion was made by Mr. [Joseph] Jones, seconded by Mr. [James] Madison, respecting the lands that may be ceded in pursuance of the foregoing report and resolve.

That in case the recommendation of Congress to the States of Virginia, North Carolina and Georgia<sup>3</sup> to cede to the United States a portion of their unappropriated Western Territory shall be complied with in such manner as to be approved of by Congress, the Territory so ceded shall be laid out in separate and distinct States at such time and in such manner as Congress shall hereafter direct, so as that no State be less than one hundred or more than one hundred and fifty miles square or as near thereto as circumstances will admit,<sup>4</sup> and that upon such cession being approved of and accepted by Congress the United States will guaranty the remaining Territory to the said States respectively.

That such of the said States as have been at expense in subduing any of the British Posts within the Territory proposed to be ceded and in maintaining Garrisons and supporting civil government therein since the reduction of such Posts shall be reimbursed by the Continent the amount of such expense.<sup>5</sup>

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3. This motion was based on the assumption that the congressional recommendation of September 6 would be transmitted to the States of Virginia, North Carolina and Georgia, only, as was provided in the unamended draft; it was prepared for introduction before the final adoption of the congressional recommendation and was actually submitted immediately after the passage of that measure.

4. This provision is repeated in the Congressional Resolution of October 10 (Document No. 3), the Virginia Act of Cession of December 20, 1783 (Document No. 4), the Virginia Deed of Cession of March 1, 1784 (Document No. 5), inferentially in the proposed Ordinance of March 1, 1784 (Document No. 6) and the Ordinance of April 23, 1784 (Document No. 7). The proposition was then abandoned and the plan of creating not less than three nor more than five States substituted in its place and this plan was ratified by Virginia in her act of December 30, 1788 (Document No. 12).

5. This provision refers to the expedition of George Rogers Clark, undertaken by the permission of Governor Patrick Henry of Virginia, financed by that commonwealth, carried out between 1778-1779, and resulting in the capture of Kaskaskia and Vincennes and the subversion of British authority in the southern part of the Northwest Territory.



That all the Lands to be ceded to the United States and not appropriated or disposed of in bounties to the American Army, shall be considered as a common fund for the use and benefit of such of the United States as have become or shall become members of the confederation according to their usual proportions or quotas of general charge and expenditure, and shall be applied and disposed of for that purpose and no other whatsoever, and, therefore, all purchases and deeds from any Indian or Indians, or any Indian Nation or Nations for any Lands within any part of such ceded Territory, which have been or shall be made for the use of any private person or persons whatsoever, shall be deemed and taken as absolutely void.

### 3. Congressional Plan for Disposition of Ceded Western Territory (October 10, 1780).

On September 9, 1780, after consideration and debate, the Virginia motion (Document No. 2) was referred to a select committee consisting of Roger Sherman of Connecticut, Artemas Ward of Massachusetts, Whitmill Hill of North Carolina, James Madison of Virginia and John Henry of Maryland. The report submitted by this select committee was taken up for final consideration on October 10, and adopted with a few modifications. Both the motion and the resolution provided for the creation of distinct States, having an area of not less than one hundred nor more than one hundred and fifty miles square; as to the political status of States so created, the resolution went a step in advance of the motion by the specific declaration that States so formed should be sovereign, free, independent and eligible to admission to the federal union on the same footing with the original States. The provisions that unceded portions of territory should be guaranteed to the ceding States, and that the proceeds accruing from the sale and disposition of the western lands should be applied on the obligations of the States "according to their usual proportions or quotas of general charge and expenditure," were stricken out, and the disposition of such proceeds entrusted to the discretion of Congress.

*[Journals of Congress, XVIII, 915.]*

Congress resumed the consideration of the report of the committee on the motion made by the delegates of Virginia; and thereupon,

*Resolved*, That the unappropriated lands that may be ceded or relinquished to the United States, by any particular states, pursuant to the recommendation of Congress of the 6 day of September last, shall be ~~granted and~~ disposed of for the common benefit of ~~all the United States that shall be members of the federal union~~, and be settled and formed into distinct republican

states, which shall become members of the federal union, and have the same rights of sovereignty, freedom and independence, as the other States: that each State which shall be so formed shall contain a suitable extent of territory, not less than one hundred nor more than one hundred and fifty miles square, or as near thereto as circumstances will admit: ~~and that upon such cession being made by any State and approved and accepted by Congress, the United States shall guaranty the remaining territory of the said States respectively.~~

That the necessary and reasonable expenses which any particular State shall have incurred since the commencement of the present war, in subduing any of the British posts, or in maintaining forts or garrisons within and for the defence, or in acquiring any part of the territory that may be ceded or relinquished to the United States, shall be reimbursed;

That the said lands shall be granted and settled at such times and under such regulations as shall hereafter be agreed on by the United States in Congress assembled, or any nine or more of them.

~~That all purchases made of the Indians of any of said lands by private persons, without the approbation of the legislature of the State to whom the right of preëmption belonged, shall not be deemed valid to make a title to such purchases.~~

That no purchases and deeds from any Indians or Indian nations, for lands within the Territory to be ceded or relinquished, ~~which have been made without the approbation of the legislature of the State within whose limits it lay for the use of any private person or persons whatsoever make a title to the purchasers shall not have been ratified by lawful authority, shall be deemed valid or ratified by Congress.~~<sup>6</sup>

#### 4. Cession of Northwest Territory by Virginia (December 20, 1783).

Prior to March 1, 1784, the territory north of the Ohio river, east of the Mississippi, and west of Pennsylvania was claimed by the States of Connecticut, Massachusetts, Virginia and New York. The claims of Connecticut were based on the terms of her colonial charter of April 20, 1662; the claims of Massachusetts, on the charter of October 7, 1691; the claims of Virginia, on the terms of her charter of May 23, 1609; and the claims of New York, which were indefinite in extent, were based on titles derived from treaties and purchases from the Six Nations. By the terms of the Charter of 1609, Virginia claimed, besides West Virginia, all of Kentucky, Ohio, Indiana, Illinois, Wisconsin, Michigan and that part of Minnesota lying east of the

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6. The last two paragraphs were postponed.

Mississippi river, being northward to the line of the British possessions as defined by the treaty of 1783, and comprising the whole of the Northwest Territory. An additional claim to the territory as far north as Lakes Michigan and Erie was based on the military exploits of George Rogers Clark who had subverted the British authority therein for the State of Virginia, during the Revolutionary War. Massachusetts claimed a strip of territory about seventy or eighty miles in width, comprehended between the parallels of 42° 2' and 43° 43' 12" north latitude, extending from Lake Huron westward to the Mississippi, being the western prolongation of her colonial grant, and comprising the southern portions of the States of Michigan and Wisconsin and the extreme northern portion of the State of Illinois. The Connecticut claim extended from the western boundary of Pennsylvania to the Mississippi river and was comprehended between the parallels of 41° and 42° 2' north latitude and formed the northern part of the States of Illinois, Indiana and Ohio. As has been shown, the first patriotic movement looking to the cession of the western lands was made by New York. On March 1, 1781, James Duane, William Floyd and Alexander M'Dougall, the delegates of New York in Congress, executed a deed agreeing to restrict the western boundary and quit-claiming the jurisdiction of New York over her western lands. On October 29, 1782, Congress, on behalf of the United States, accepted this cession and it was further confirmed by an act of the State of New York on April 19, 1785. The next State to respond was Virginia. The first act of cession was passed on January 2, 1781, but stipulated conditions which Congress was disinclined to accept. After long considering the terms stipulated by Virginia, and after the cession of New York had been definitely accepted, Congress, on September 13, 1783, specified the terms on which the cession would be accepted, and these terms were agreed to by Virginia and incorporated in the Virginia Act of Cession which was passed on December 20, 1783. The only territorial reservation in this cession was a tract of land not exceeding 150,000 acres in extent to be allowed and granted to General George Rogers Clark and the officers and soldiers who served with him during the reduction of the military posts of Kaskaskies and St. Vincents.<sup>7</sup> The total disputed and undisputed area of western territory ceded by Virginia to the United States aggregated 265,562 square miles and included, of course, the claims of Connecticut and Massachusetts. The next State to take action was Massachusetts. On November 13, 1784, the general court of Massachusetts authorized three of her delegates to cede her claims to the western lands to the United States. On March 17, 1785, a supplementary act was passed empowering any two delegates to execute the deed of transfer. On April 19, 1785, the deed was formally executed by Samuel Holten and Rufus King and was accepted by Congress the same day. The territory ceded contained an aggregate area of 54,000 square miles. On October 10, 1780, Connecticut tendered the cession of her lands to the United States with certain restrictions which Congress refused to accept.

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7. This reservation, which is known as "Clark's Grant" or the "Illinois Grant," is located in Clark, Scott and Floyd counties, Indiana, just above the Falls of the Ohio river, and was selected by Colonel Clark and several other military officers appointed for that purpose. It was the first land in the State to be surveyed, and, with the Vincennes tract, is the only exception to the general survey of the State. It was divided into tracts of five hundred acres each, and a town site of 1,000 acres was set aside by the State of Virginia and named Clarksville.



Nothing further was done for a period of six years. Finally, on the second Thursday of May, 1786, the legislature authorized the Connecticut delegates to cede a portion of the western lands on certain conditions, and these conditions Congress, on May 26, 1786, resolved to accept. The deed of cession was executed on September 13, 1786, by William Samuel Johnson and Jonathan Sturges and was accepted by Congress on September 14, 1786. The territory including soil and jurisdiction conveyed by this deed was comprehended between the parallels of 41° and 42° 2' north latitude and extended from a meridian passing one hundred and twenty miles west of the western boundary of Pennsylvania to the Mississippi river. The rectangular portion of territory comprehended between the parallels of 41° and 42° 2' north latitude and extending one hundred and twenty miles westward from the western boundary of Pennsylvania was known as the "Western Reserve of Connecticut in Ohio." This territory embraces fourteen counties in the State of Ohio and contains about 3,800,000 acres. About 500,000 acres of this tract, comprising three counties, were known as the "Fire-lands" and were donated by Connecticut to such of her citizens as suffered loss by fire and raids by the British troops and raiders during the Revolutionary War. In October, 1797, the legislature of Connecticut tendered to the United States a release of her jurisdictional claims to the Western Reserve, but excepted therefrom the claim of Connecticut to the right of the soil. On April 28, 1800, Congress authorized the President to accept this jurisdictional cession, and in conformity therewith, on the second Thursday of May, 1800, the legislature of Connecticut passed an act renouncing her jurisdictional claims to the Western Reserve and on May 30, 1800, Jonathan Trumbull, governor of Connecticut, by formal act, quit-claimed all jurisdictional title to this territory to the United States. The "Fire-lands" were donated as stated above and the remainder of the Reserve was sold on September 9, 1795, by the State to a company for forty cents per acre and became the basis of the common school fund. The Connecticut claim was about sixty-two miles in width and contained approximately 40,000 square miles. Except as otherwise indicated above, the cessions of Massachusetts and Connecticut were made without condition, merely relinquishing their title to create a common interest in the uncultivated western lands for the common benefit and use of the United States.

[*Journals of Congress, IV, 343.*<sup>8</sup>]

WHEREAS the Congress of the United States did, by their act of the sixth day of September, in the year 1780, recommend to the several States in the union, having claims to waste and unappropriated lands in the western country, a liberal cession to the United States, of a portion of their respective claims, for the common benefit of the union: and whereas this commonwealth did, on the 2d day of January, in the year 1781, yield to the Congress of the United States, for the benefit of the said States, all

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8. *Journals of the American Congress: From 1774 to 1788.* 4 Vols. 1823. All subsequent citations to the Journals refer to this edition.

right, title and claim which the said commonwealth had to the territory northwest of the river Ohio, subject to the conditions annexed to the said act of cession.

AND WHEREAS the United States in Congress assembled, have, by their act of the 13th of September last, stipulated the terms on which they agree to accept the cession of this State, should the legislature approve thereof, which terms, although they do not come fully up to the propositions of this commonwealth, are conceived in the whole, to approach so nearly to them, as to induce this State to accept thereof, in full confidence, that Congress will in justice to this State, for the liberal cession she hath made, earnestly press upon the other States claiming large tracts of waste and uncultivated territory, the propriety of making cessions equally liberal, for the common benefit and support of the union.

*Be it enacted by the general assembly,* That it shall and may be lawful for the delegates of this State, to the Congress of the United States, or such of them as shall be assembled in Congress, and the said delegates, or such of them so assembled, are hereby fully authorized and empowered, for and on behalf of this State, by proper deeds or instrument in writing, under their hands and seals, to convey, transfer, assign and make over unto the United States in Congress assembled, for the benefit of the said States, all right, title and claim, as well of soil as jurisdiction, which this commonwealth hath to the territory or tract of country within the limits of the Virginia charter, situate, lying and being to the north-west of the river Ohio, subject to the terms and conditions contained in the before recited act of Congress, of the 13th day of September last; that is to say, upon condition that the territory so ceded, shall be laid out and formed into States, containing a suitable extent of territory, not less than 100, nor more than 150 miles square, or as near thereto as circumstances will admit; and that the States so formed, shall be distinct republican States, and admitted members of the federal Union; having the same rights of sovereignty, freedom and independence, as the other States.

That the necessary and reasonable expenses incurred by this State, in subduing any British posts, or in maintaining forts or garrisons within, and for the defence, or in acquiring any part of the territory so ceded or relinquished, shall be fully reimbursed by the United States: and that one commissioner shall be appointed by Congress, one by this commonwealth, and another by

those two commissioners, who, or a majority of them, shall be authorized and empowered to adjust and liquidate the account of the necessary and reasonable expenses incurred by this State, which they shall judge to be comprised within the intent and meaning of the act of Congress, of the 10th of October, 1780, respecting such expenses. That the French and Canadian inhabitants, and other settlers of the Kaskaskies, St. Vincents, and the neighbouring villages who have professed themselves citizens of Virginia, shall have their possessions and titles confirmed to them, and be protected in the enjoyment of their rights and liberties.<sup>9</sup> That a quantity not exceeding 150,000 acres of land, promised by this State, shall be allowed and granted to the then colonel, now general George Rogers Clarke, and to the officers and soldiers of his regiment, who marched with him when the posts of Kaskaskies and St. Vincents were reduced, and to the officers and soldiers, that have been since incorporated into the said regiment, to be laid off in one tract, the length of which not to exceed double the breadth, in such place on the north-west side of the Ohio, as a majority of the officers shall choose, and to be afterwards divided among the said officers and soldiers in due proportion, according to the laws of Virginia. That in case the quantity of good lands on the south-east side of the Ohio, upon the waters of Cumberland river, and between the Green river and Tennessee river, which have been reserved by law for the Virginia troops upon continental establishment, should, from the North-Carolina line, bearing in further upon the Cumberland lands than was expected, prove insufficient for their legal bounties, the deficiency should be made up to the said troops, in good lands, to be laid off between the rivers Scioto, and Little Miami, on the north-west side of the river Ohio, in such proportions as have been engaged to them by the laws of Virginia. That all the lands within the territory so ceded to the United States, and not reserved for or appropriated to any of the before-mentioned purposes, or disposed of in bounties to the officers and soldiers of the American army, shall be considered as a common fund for the use and benefit of such of the United States, as have become or shall become members of the confederation or federal alliance of the said States,

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9. The special immunities granted to the settlers of the Kaskaskies, St. Vincents and the neighboring villages were not acknowledged by any provision of the proposed Ordinance of March 1, 1784, or of the Ordinance of April 23, 1784, or the original draft of the Ordinance of 1787. They first appear in the completed draft of the Ordinance of July 13, 1787, in a slightly modified form, and became the source of great perplexity in determining the legal right of the institution of slavery to exist in the Northwest Territory.



Virginia inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and *bona fide* disposed of for that purpose, and for no other use or purpose whatsoever. Provided, That the trust hereby reposed in the delegates of this State, shall not be executed, unless three of them at least are present in Congress.

**5. Virginia Deed of Cession of Northwest Territory (March 1, 1784).**

The Deed of Cession by which the title to all the territory lying north-west of the Ohio river was transferred to the United States was signed, sealed and delivered on March 1, 1784, by Thomas Jefferson, Samuel Hardy, Arthur Lee and James Madison, the delegates to Congress for the commonwealth of Virginia. Congress on the same day, by an appropriate resolution, formally acknowledged the transfer.

[*Journals of Congress, IV, 342.*]

WHEREAS the general assembly of Virginia at their session, commencing on the 20th day of October, 1783, passed an act to authorize their delegates in Congress to convey to the United States in Congress assembled, all the right of that commonwealth, to the territory north-westward of the river Ohio: And whereas the delegates of the said commonwealth, have presented to Congress the form of a deed proposed to be executed pursuant to the said act, in the words following:

To all who shall see these presents, we Thomas Jefferson, Samuel Hardy, Arthur Lee and James Monroe, the underwritten delegates for the commonwealth of Virginia, in the Congress of the United States of America, send greeting:

WHEREAS the general assembly of the commonwealth of Virginia, at their sessions begun on the 20th day of October, 1783, passed an act, entitled “an act to authorize the delegates of this State in Congress, to convey to the United States in Congress assembled, all the right of this commonwealth, to the territory north-westward of the river Ohio,” in these words following, to-wit: (here follows the act of cession:)

AND WHEREAS the said general assembly, by their resolution of June 6th, 1783, had constituted and appointed us the said Thomas Jefferson, Samuel Hardy, Arthur Lee, and James Monroe, delegates to represent the said commonwealth in Congress for one year, from the first Monday in November then next following, which resolution remains in full force: Now therefore, know

ye, that we the said Thomas Jefferson, Samuel Hardy, Arthur Lee, and James Monroe, by virtue of the power and authority committed to us by the act of the said general assembly of Virginia before recited, and in the name, and for and on behalf of the said commonwealth, do by these presents convey, transfer, assign, and make over unto the United States in Congress assembled, for the benefit of the said states, Virginia inclusive, all right, title and claim, as well as of soil as of jurisdiction, which the said commonwealth hath to the territory or tract of country within the limits of the Virginia charter, situate lying and being to the north-west of the river Ohio, to and for the uses and purposes, and on the conditions of the said recited act. In testimony whereof, we have hereunto subscribed our names and affixed our seals, in Congress, the 1st day of March, in the year of our Lord 1784, and of the independence of the United States the eighth.

#### 6. Proposed Ordinance of Government (March 1, 1784).

As soon as the United States had acquired legal possession of the territory northwest of the Ohio river, it became necessary to provide for the organization of a territorial government. One of the first plans devised for the organization and settlement of this territory was drawn up by Timothy Pickering and several other army officers, as early as April, 1783. It contemplated the formation of a State, the adoption of a constitution before settlement, and its immediate admission to the Union, as well as the complete exclusion of slavery. The draft of this plan which Rufus Putnam had, and which was embodied in a petition and sent to Congress, proposed only to mark out a territory with a suitable periphery, the formation of a distinct government and its future admission to the Union. Little effort was made to secure the adoption of this plan. The first scheme of western colonization actually introduced in Congress was in June, 1783, but nothing was done with it. On March 1, 1784, the day on which the Virginia Deed of Cession was executed, a committee of Congress, consisting of Thomas Jefferson of Virginia, Jeremiah T. Chase of Maryland and David Howell of Rhode Island, submitted the following plan for the temporary government of the Western Territory.

[*Works of Jefferson, IV, 251.*<sup>10</sup>]

The Committee appointed to prepare a plan for the temporary Government of the Western territory have agreed to the following resolutions:

*Resolved* that the territory ceded or to be ceded by Individual

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10. The Works of Thomas Jefferson. Federal Edition. Collected and Edited by P. L. Ford. 12 Volumes.

States to the United States<sup>11</sup> whensoever the same shall have been purchased of the Indian Inhabitants & offered for sale by the U. S. shall be formed into distinct States bounded in the following manner as nearly as such cessions will admit, that is to say: Northwardly & Southwardly by parallels of latitude so that each State shall comprehend from South to North two degrees of latitude beginning to count from the completion of thirty-one degrees North of the Equator, but any territory Northwardly of the 47th degree shall make part of the State—next below, and Eastwardly & Westwardly they shall be bounded, those on the Mississippi by that river on one side and the meridian of the lowest point of the rapids of Ohio on the other; and those adjoining on the East by the same meridian on their Western side, and on their eastern by the meridian of the Western cape of the mouth of the Great Kanhaway. And the territory eastward of this last meridian between the Ohio, Lake Erie & Pennsylvania shall be one State.

That the settlers within the territory so to be purchased & offered for sale shall, either on their own petition, or on the order of Congress, receive authority from them, with appointments of time and place for their free males<sup>12</sup> of full age to meet together for the purpose of establishing a temporary government, to adopt the constitution & laws of any one of these States, so that such laws nevertheless shall be subject to alteration by their ordinary legislature, and to erect, subject to a like alteration counties or townships for the election of members for their legislature.

That such temporary government shall only continue in force in any State until it shall have acquired 20,000 free inhabitants, when, giving due proof thereof to Congress, they shall receive from them authority with appointments of time and place to call a convention of representatives to establish a permanent constitution & government for themselves.

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11. At the date of the submission of this proposed Ordinance, the only claims to lands in the western country which had actually been ceded were those of New York and Virginia, on March 1, 1784. Massachusetts ceded her claim on April 19<sup>th</sup> 1785, and Connecticut on September 13, 1786, except the Western Reserve which was relinquished on May 30, 1800. By the date of the adoption of the Ordinance of 1787, Congress controlled all of the Northwest Territory except the Western Reserve. South Carolina ceded her claims to western lands on August 9, 1787; North Carolina, on February 25, 1790; and Georgia, on April 24, 1802. On June 1, 1792, Kentucky, which had been a district of Virginia, was erected into an independent State and admitted to the Union.

12. By the use of the expressions "free males" and "20,000 free inhabitants," the institution of slavery was inferentially recognized, and the express exclusion of slavery and involuntary servitude after the year 1800, renders the proposed measure self-contradictory.



Provided that both the temporary & permanent governments be established on these principles as their basis. 1, That they shall forever remain a part of the United States of America. 2, That in their persons, property & territory, they shall be subject to the Government of the United States in Congress assembled and to the articles of confederation in all those cases in which the original States shall be so subject. 3, That they shall be subject to pay a part of the federal debts contracted or to be contracted to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States. 4, That their respective governments shall be in republican forms, and shall admit no person to be a citizen, who holds any hereditary title. 5, That after the year 1800 of the Christian Era, there shall be neither slavery nor involuntary servitude in any of the said states, otherwise than in punishment of crimes, whereof the party shall have been duly convicted to have been personally guilty.

That whenever any of the said States shall have, of free inhabitants as many as shall then be in any one the least numerous of the thirteen original States, such State shall be admitted by its delegates into the Congress of the United States, on an equal footing with the said original States: After which the assent of two-thirds of the United States in Congress assembled shall be requisite in all those cases, wherein by the Confederation the assent of nine States is now required. Provided, the consent of nine States to such admission may be obtained according to the eleventh of the Articles of Confederation. Until such admission by their delegates into Congress, any of the said States, after the establishment of their temporary government, shall have authority to keep a sitting Member in Congress, with the right of debating, but not of voting.

That the territory Northward of the 45th degree, that is to say of the completion of 45 degrees from the Equator & extending to the Lake of the Woods, shall be called SYLVANIA:

That of the territory under the 45th & 44th degrees that which lies Westward of Lake Michigan shall be called MICHIGANIA, and that which is Eastward thereof within the peninsula formed by the lakes & waters of Michigan, Huron, St. Clair and Erie, shall be called CHERRONESUS, and shall include any part of the peninsula which may extend above the 45th degree.

Of the territory under the 43d & 42d degrees, that to the Westward thro' which the Assenisipi or Rock river runs shall be

called ASSENISIPIA, and that to the Eastward in which are the fountains of the Muskingum, the two Miamis of Ohio, the Wabash, the Illinois, the Miami of the lake and Sandusky rivers, shall be called METROPOTAMIA.

Of the territory which lies under the 41st & 40th degrees the Western, thro which the river Illinois runs, shall be called ILLINOIA; that next adjoining to the Eastward SARATOGA, and that between this last & Pennsylvania & extending from the Ohio to Lake Erie shall be called WASHINGTON.

Of the territory which lies under the 39th & 38th degrees to which shall be added so much of the point of land within the fork of the Ohio & Missisipi as lies under the 37th degree, that to the Westward within & adjacent to which are the confluences of the rivers Wabash, Shawnee, Tanisse, Ohio, Illinois, Missisipi & Missouri, shall be called POLYPOTAMIA, and that to the Eastward farther up the Ohio otherwise called the PELISIPI shall be called PELISIPIA.

That the preceding articles shall be formed into a charter of Compact, shall be duly executed by the President of the U. S. in Congress assembled under his hand and the seal of the United States, shall be promulgated, and shall stand as fundamental constitutions between the thirteen original States, & those now newly described unalterable but by the joint consent of the U. S. in Congress assembled and of the particular state within which such alteration is proposed to be made.<sup>13</sup>

#### **7. Ordinance of Government (April 23, 1784).**

The plan of government embodied in the report of March 1, 1784, was designed to apply to all of the territory west of the Appalachian Mountains and extending from the 31st parallel of latitude northward to the international boundary line. This plan of government was not entirely satisfactory to Congress and was recommitted to the same committee for amendment and revision on March 17. On March 22, a new report was submitted. The plan recommended in this second report was not essentially different from the first plan, except that the fanciful names assigned to the putative States were eliminated. Both reports contained a paragraph excluding slavery and involuntary servitude after the year 1800. This provision was obnoxious to the southern delegates, and on April 19, on motion of Mr. Richard Dobbs Spaight of North Carolina, the provision was stricken out. On April 20 and 21, the report was considered further and amended. On April 23, 1784, the Resolutions for the Government of the Western Territory were adopted.

13. The plan of government designed by this proposed ordinance was intended to operate in a strip of territory just west of Pennsylvania and in addition the whole domain between the meridian running through the western cape of the mouth of the Great Kanawha on the east and the Mississippi on the west, and extending from the 31st parallel of latitude to the international boundary line on the north.

On the final vote, agreeing to the resolutions without the clause prohibiting slavery and involuntary servitude after the year 1800, ten states voted "aye" and one "no." The Ordinance of April 23, 1784, though practically inoperative, remained in force as a plan of government for the Western Territory until specifically repealed by the last clause of the Ordinance of July 13, 1787.

[*Journals of Congress, IV, 379.*]

*Resolved,* That so much of the territory ceded or to be ceded by individual States to the United States, as is already purchased or shall be purchased of the Indian inhabitants, and offered for sale by Congress, shall be divided into distinct States, in the following manner, as nearly as such cessions will admit; that is to say, by parallels of latitude, so that each State shall comprehend from north to south two degrees of latitude, beginning to count from the completion of 45 degrees north of the equator; and by meridians of longitude, one of which shall pass through the lowest point of the rapids of Ohio, and the other through the western cape of the mouth of the great Kenhaway: but the territory eastward of this last meridian, between the Ohio, lake Erie and Pennsylvania, shall be one State whatsoever may be its comprehension of latitude. That which may lie beyond the completion of the 45th degree between the said meridians, shall make part of the State adjoining it on the south: and that part of the Ohio, which is between the same meridians coinciding nearly with the parallel of 39° shall be substituted so far in lieu of that parallel as a boundary line.

That the settlers on any territory so purchased, and offered for sale, shall, either on their own petition or on the order of Congress, receive authority from them, with appointments of time and place, for their free males of full age within the limits of their State to meet together, for the purpose of establishing a temporary government, to adopt the constitution and laws of any one of the original States; so that such laws nevertheless shall be subject to alteration by their ordinary legislature; and to erect, subject to a like alteration, counties, townships, or other divisions, for the election of members for their legislature.

That when any such State shall have acquired 20,000 free inhabitants, on giving due proof thereof to Congress, they shall receive from them authority with appointments of time and place, to call a convention of representatives to establish a permanent constitution and government for themselves. Provided that both the temporary and permanent governments be established on these principles as their basis.



1st. That they shall forever remain a part of this confederacy of the United States of America.

2nd. That they shall be subject to the articles of confederation in all those cases in which the original States shall be so subject, and to all the acts and ordinances of the United States in Congress assembled, conformable thereto.

3d. That they in no case shall interfere with the primary disposal of the soil by the United States in Congress assembled, nor with the ordinances and regulations which Congress may find necessary, for securing the title in such soil to the *bona fide* purchasers.

4th. That they shall be subject to pay a part of the federal debts contracted or to be contracted, to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States.

5th. That no tax shall be imposed on lands, the property of the United States.

6th. That their respective governments shall be republican.

7th. That the lands of non-resident proprietors shall, in no case, be taxed higher than those of residents within any new state, before the admission thereof to a vote by its delegates in Congress.

That whensoever any of the said States shall have, of free inhabitants, as many as shall then be in any one the least numerous of the thirteen original States, such State shall be admitted by its delegates into the Congress of the United States, on an equal footing with the said original States; provided the consent of so many States in Congress is first obtained as may at the time be competent to such admission. And in order to adapt the said articles of Confederation to the State of Congress when its numbers shall be thus increased, it shall be proposed to the legislatures of the States, originally parties thereto to require the assent of two-thirds of the United States in Congress assembled, in all those cases wherein, by the said articles, the assent of nine States is now required, which being agreed to by them, shall be binding on the new States. Until such admission by their delegates into Congress, any of the said States, after the establishment of their temporary government, shall have authority to keep a member in Congress, with a right of debating but not of voting.

That measures not inconsistent with the principles of the Confederation, and necessary for the preservation of peace and good order among the settlers in any of the said new States, until they

shall assume a temporary government as aforesaid, may, from time to time, be taken by the United States in Congress assembled.

That the preceding articles shall be formed into a charter of compact; shall be duly executed by the president of the United States in Congress assembled, under his hand, and the seal of the United States; shall be promulgated; and shall stand as fundamental constitutions between the thirteen original States, and each of the several States now newly described, unalterable from and after the sale of any part of the territory of such State, pursuant to this resolve, but by the joint consent of the United States in Congress assembled and of the particular State within which such alteration is proposed to be made.<sup>14</sup>

#### 8. Slavery and Involuntary Servitude Clause (March 16, 1785).

The proposed ordinance of March 1, 1784, contained a clause prohibiting slavery and involuntary servitude after the year 1800. Before Congress had had an opportunity to express its approbation or disapprobation of this proviso, the ordinance was recommitted to the same committee for reconsideration. On March 22, the ordinance was reported back to Congress with a few changes, but still retaining the anti-slavery clause. On April 19, on motion of Mr. Richard Dobbs Spaight of North Carolina, the proviso was stricken out, and the institution of slavery was thus specifically recognized by the measure as adopted. The exclusion of this provision was a source of profound regret and humiliation to Jefferson, and its adoption would, as he said, have prevented the further extension of "this abominable crime." On March 8, 1785, Colonel Timothy Pickering wrote to Rufus King, deprecating the omission of the anti-slavery clause, and pleading that one more effort might be made to forestall the "calamity" of slavery extension. Manifestly in response to this intercession, a week later, on March 16, 1785, the clause prohibiting slavery and involuntary servitude was, on motion of Rufus King, seconded by William Ellery of Rhode Island, committed to a committee of the whole house as a separate and independent proposition. The motion was offered with the intention of restoring the proviso to the ordinance of April 23, 1784. On the motion to commit, the vote stood eight States "aye" and three States "no." After its commitment, the proposition was not subsequently considered until July 12, 1787, when the Ordinance of that year was being per-

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14. Aside from comparatively unimportant verbal changes, the chief differences between the proposed Ordinance of March 1, 1784, and April 23, 1784, were a few changes in the boundaries of the proposed states, the elimination of the fanciful names assigned to the putative states, the omission of the anti-slavery proviso, and the excision of the clause providing that no person should be admitted to citizenship who held an hereditary title. This latter change was made, "not from an approbation of such honors" but because it was thought to be "an improper place to encounter them." New provisions were enacted reserving to the United States the primary disposition of the soil, prohibiting the imposition of local taxes on property belonging to the United States, pledging the United States to enact laws for the government of the territory until a temporary government could be established, and prohibiting the taxation of the lands of non-residents at a higher rate than residents.

fect. The proposed clause as here given contains no provision for reclaiming fugitives without which it could not have carried.

[*Journals of Congress, IV, 481.*]

A motion was made by Mr. [Rufus] King, seconded by Mr. [William] Ellery, that the following proposition be committed.

That there shall be neither slavery nor involuntary servitude in any of the States, described in the resolve of Congress of the 23d of April, 1784, otherwise than in punishment of crimes, whereof the party shall have been personally guilty; and that this regulation shall be an article of compact, and remain a fundamental principle of the constitutions between the thirteen original States, and each of the States described in the said resolve of the 23d of April, 1784.<sup>15</sup>

#### 9. Ordinance of 1787 as Amended to Third Reading on May 10.

Between April 23, 1784, and July 13, 1787, three ordinances for the government of the Western Territory, designed to supplant the Ordinance of April 23, 1784, were submitted to Congress. The first of these three ordinances was submitted on May 10, 1786, and after consideration was re-committed on July 13. The second ordinance was submitted on September 19, and after consideration was postponed on September 29. The third ordinance was submitted on April 26, 1787. On May 9, the report embodying this ordinance was read a second time and amended and made the order of the day for May 10, when its further consideration was postponed.

[*Miscellaneous Documents, XIX, 150.*]

*It is hereby ordained by the United States, in Congress assembled,* That there shall be appointed from time to time, a governor whose commission shall continue in force for the term of three years, unless sooner revoked by Congress.

There shall be appointed by Congress from time to time, a secretary, whose commission shall continue in force for four years, unless sooner revoked by Congress. It shall be his duty to keep and preserve the acts and laws passed by the general assembly,

15. According to Jacob P. Dunn, "Indiana—A Redemption From Slavery," p. 192, this resolution was committed to a committee consisting of Rufus King, David Howell, and William Ellery. This committee reported on April 6, making two important changes. The first provided that the anti-slavery clause should not become effective until the year 1800, and the second added the fugitive-slave clause which was subsequently incorporated in the Ordinance of 1787. The fugitive-slave clause as quoted by Dunn is as follows: "*Provided always, that upon the escape of any person into any of the States described in the said resolve of Congress of the 23d day of April, 1784, from whom labor or service is lawfully claimed in any one of the thirteen original States, such fugitive may be lawfully reclaimed and carried back to the person claiming his labor or service as aforesaid, this resolve notwithstanding.*"



and public records of the district, and of the proceedings of the governor in his executive department, and transmit authentic copies of such acts and proceedings every six months to the Secretary of Congress.

There shall also be appointed a court, to consist of three judges, any two of whom shall form a court, who shall have a common law jurisdiction, whose commissions shall continue in force during good behavior.

And to secure the rights of personal liberty and property to the inhabitants and others, purchasers in the said district, it is hereby ordained that the inhabitants of such districts shall always be entitled to the benefits of the act of *habeas corpus*, and of the trial by jury.

The governor and judges, or a majority of them, shall adopt, and publish in the district, such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to Congress from time to time, which shall prevail in said district until the organization of the general assembly, unless disapproved by Congress; but afterwards the general assembly shall have authority to alter them as they shall think fit: *Provided, however,* That said assembly shall have no power to create perpetuities.

The governor for the time being shall be commander-in-chief of the militia, and appoint and commission all officers in the same below the rank of general officer. All officers of that rank shall be appointed and commissioned by Congress.

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers in each county or township, as he shall find necessary for the preservation of peace and good order in the same. After the general assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

The governor shall, as soon as may be, proceed to lay out the district into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature, as soon as there shall be five thousand free male inhabitants of full age within the said district. Upon giving due proof thereof to the governor they shall receive authority, with time and place to elect representatives from their counties or townships as afore-

said, to represent them in general assembly, provided that for every five hundred free male inhabitants there shall be one representative, and so on progressively with the number of free male inhabitants shall the right of representation increase, until the number of representatives amount to twenty-five; after which the number and proportion of representatives shall be regulated by the legislature, provided that no person shall be eligible or qualified to act as a representative unless he shall be a citizen of one of the United States, or have resided within the district three years, and shall likewise hold, in his own right in fee-simple, two hundred acres of land within the same: *Provided, also,* That a freehold or life estate in fifty acres of land, in the said district, of a citizen of any of the United States, and two years' residence, if a foreigner, in addition shall be necessary to qualify a man as elector for said representatives.

The representatives thus elected shall serve for the term of two years; and in the case of the death of a representative or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve during the residue of the time.

The general assembly shall consist of the governor, a legislative council—to consist of five members, to be appointed by the United States, in Congress assembled, to continue in office during pleasure, any three of whom to be a quorum—and a House of Representatives, who shall have a legislative authority, complete in all cases for the good government of said district: *Provided,* That no act of the said general assembly shall be construed to affect any lands the property of the United States: *And provided, further,* That the lands of the non-resident proprietors shall in no instance be taxed higher than the lands of residents.

All bills shall originate indifferently either in the council or House of Representatives, and having been passed by a majority in both houses, shall be referred to the governor for his assent, after obtaining which, they shall be complete and valid; but no bill or legislative act, whatever, shall be valid, or of any force, without his assent.

The governor shall have power to convene, prorogue, and dissolve the general assembly, when in his opinion it shall be expedient.

The said inhabitants or settlers shall be subject to pay a part of the Federal debts contracted or to be contracted, and to bear a proportional share of the burdens of the government, to

be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States.

The governor, judges, legislative council, secretary, and such other officers as Congress shall at any time think proper to appoint in such district, shall take an oath or affirmation of fidelity; the governor before the President of Congress, and all other officers before the governor, prescribed on the 27th day of January, 1785, to the Secretary of War, *mutatis mutandis*.

Whensoever any of the said States shall have of free inhabitants as many as are equal in number to the one-thirteenth part of the citizens of the original States, to be computed from the last enumeration, such State shall be admitted by its delegates into the Congress of the United States on an equal footing with the said original States, provided the consent of so many States in Congress is first obtained as may at that time be competent to such admission.

*Resolved*, That the resolutions of the 23d of April, 1784, be, and the same are hereby annulled and repealed.

#### 10. Ordinance of July 13, 1787.

The cause of the sudden interruption in the consideration of the proposed ordinance of April 26, 1787, was the arrival in New York of General S. H. Parsons, an agent of the Ohio Company of Associates, who were negotiating for the purchase of a large tract of land in the Western Territory, and who were personally interested in the form of colonial government devised. After presenting a memorial to Congress, General Parsons left immediately and his place was taken by Dr. Mannesseh Cutler, who reached New York on July 5. On July 9, the ordinance was referred to a new committee. On July 10, at the request of the committee Dr. Cutler presented his suggestions in writing. On July 11, the committee reported the ordinance in a revised form. On July 12, it was amended, on motion of Mr. Nathan Dane of Massachusetts to include the clause prohibiting slavery and involuntary servitude, and on July 13, 1787, the Ordinance passed, by a unanimous vote of the eight States whose delegates were present in Congress. The new ordinance as amended and amplified, reported and passed contained much important original material which must have been adopted either at the instance of the new committee of which Edward Carrington of Virginia, whose sentiments were well known to Congress, was chairman, or by the agents of the Ohio Company of Associates who were diligent in preferring their suggestions to Congress and the committee. The most important supplementary material recommended and adopted was the sections providing for the equal distribution of estates, the extension of the fundamental principles of civil and religious liberty, the safe-guarding of the rights of conscience, the diffusion of knowledge or education and the articles of compact. With certain subsequent modifications



this Ordinance was the fundamental instrument of government for Indiana Territory until the adoption of the Constitution of 1816.

[*Old South Leaflets, No. 13.*]

AN ORDINANCE FOR THE GOVERNMENT OF THE TERRITORY  
OF THE UNITED STATES NORTHWEST OF THE RIVER  
OHIO.

*Be it ordained by the United States in Congress assembled, That* the said territory, for the purposes of temporary government, be one district, subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.<sup>16</sup>

*Be it ordained by the authority aforesaid, That* the estates, both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to, and be distributed among, their children, and the descendants of a deceased child, in equal parts; the descendants of a deceased child or grandchild to take the share of their deceased parent in equal parts among them: And where there shall be no children or descendants, then in equal parts to the next of kin in equal degree; and, among collaterals, the children of a deceased brother or sister of the intestate shall have, in equal parts among them, their deceased parents' share; and there shall, in no case, be a distinction between kindred of the whole and half-blood; saving, in all cases, to the widow of the intestate her third part of the real estate for life, and one-third part of the personal estate; and this law, relative to descents and dower, shall remain in full force until altered by the legislature of the district. And, until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her, in

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16. On July 4, 1800, the territory was divided into two districts for the purposes of temporary government: the division was authorized by the act of May 7, 1800 (Document No. 16). The line of division was drawn from the Ohio river opposite the mouth of the Kentucky river to Fort Recovery and thence north to its intersection with the boundary line between the United States and Canada. The eastern district, roughly coterminous with the present State of Ohio, was known as the Territory Northwest of the Ohio River, and the western district as Indiana Territory. On June 30, 1805, by an act of January 11, 1805 (Document No. 19), Indiana Territory was subdivided by a line drawn east from the southern extremity of Lake Michigan to its intersection with Lake Erie. The northern district thus created was known as Michigan Territory. On March 1, 1809, by an act approved February 3, 1809 (Document No. 25), Indiana Territory was again divided by the Wabash River and a line drawn from Post Vincennes due north to the territorial line between the United States and Canada. The western district was known as Illinois Territory.

whom the estate may be (being of full age), and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered by the person, being of full age, in whom, the estate may be, and attested by two witnesses, provided, such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers shall be appointed for that purpose; and personal property may be transferred by delivery; saving, however to the French and Canadian inhabitants, and other settlers of the Kaskaskias, St. Vincents, and the neighboring villages who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.<sup>17</sup>

*Be it ordained by the authority aforesaid,* That there shall be appointed, from time to time, by Congress,<sup>18</sup> a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein in 1,000 acres of land, while in the exercise of his office.

There shall be appointed, from time to time, by Congress, a secretary, whose commission shall continue in force for four years unless sooner revoked; he shall reside in the district, and have a freehold estate therein in 500 acres of land, while in the exercise of his office; it shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his Executive department; and transmit authentic copies of such acts and proceedings, every

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17. This provision was the source of a prolonged controversy in the Territory. On the subject of slavery, the Ordinance is self-contradictory. By Article VI, slavery and involuntary servitude are expressly prohibited. But the institution is inferentially recognized by the provisions restricting suffrage to, and basing the apportionment of representatives upon, the number of "free male inhabitants", authorizing the admission of States when the population aggregated "sixty thousand free inhabitants", and saving to the settlers of Kaskaskias and St. Vincents their ancient laws and customs "relative to the descent and conveyance of property." Judicial and executive construction of these conflicting slavery provisions were to the effect that (1) slave property in the northern part of the Territory was amply protected by Jay's Treaty, but by that alone; (2) negroes held in slavery at the time of the passage of the Ordinance remained slaves; (3) slaves taken to the Northwest Territory or negroes born therein after the passage of the Ordinance, were free. (The best summary of this question is in Dunn's "Indiana", chap. VI.)

18. After the adoption of the Federal Constitution, the President of the United States, by and with the advice and consent of the senate, was authorized to appoint and remove the governor, secretary, judges and all general military officers. Act of August 7, 1789 (Document No. 13).

six months, to the Secretary of Congress.<sup>19</sup> There shall also be appointed a court to consist of three judges, any two of whom to form a court,<sup>20</sup> who shall have a common law jurisdiction,<sup>21</sup> and reside in the district, and have each therein a freehold estate in 500 acres of land while in the exercise of their offices; and their commissions shall continue in force during good behavior.<sup>22</sup>

The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original States,<sup>23</sup> criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to Congress from time to time: which laws shall be in force in the district until the organization of the General Assembly therein, unless disapproved of by Congress;<sup>24</sup> but, afterwards, the legislature shall have authority to alter them as they shall think fit.

The governor, for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

Previous to the organization of the General Assembly, the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same: After the General Assembly shall be organized, the powers and duties of the magistrates and other civil officers, shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and

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19. After the organization of the Federal Government, an act of August 7, 1789 (Document No. 13), provided that all official documents should be transmitted to the President of the United States. By the same act, the secretary of the Territory was authorized to act as governor in the event of the death, removal, resignation or necessary absence of the governor.

20. In 1792, any one judge, in the event of the absence of the other two, was authorized to form a court. Act of May 8, 1792 (Document No. 14); but this plan worked badly and by an act of February 24, 1815 (Document No. 32), at least two judges were required to form a court.

21. By an act of April 29, 1816, chancery as well as common law powers were conferred on the General Court. (Document No. 33.)

22. By the act of December 18, 1812, the territorial judges were required to reside in the Territory and were forbidden to practice law. (Document No. 29.)

23. The governor and judges were restricted to the adoption of laws of the original States; they had no authority to enact new laws, or, prior to May 8, 1792, to repeal laws once adopted. (Document No. 14.)

24. The first territorial act disapproved by Congress was the statute of limitations adopted on December 28, 1788, and disapproved on May 8, 1792. (Document No. 14.)



for the execution of process, criminal and civil, the governor shall make proper division thereof; and he shall proceed, from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

So soon as there shall be 5,000 free male inhabitants of full age in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships to represent them in the General Assembly:<sup>25</sup> *Provided*, That, for every 500 male inhabitants, there shall be one representative,<sup>26</sup> and so on progressively with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to 25; after which the number and proportion of representatives shall be regulated by the legislature:<sup>27</sup> *Provided*, That no person be eligible or qualified to act as a representative unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and, in either case, shall likewise hold in this own right, in fee simple, 200 acres of land within the same:<sup>28</sup> *Provided, also*, That a freehold in 50 acres of land in the district, having been a citizen of one of the States, and being resident in the district, or the like freehold and two years residence in the district, shall be necessary to qualify a man as an elector of a representative.<sup>29</sup>

The representatives thus elected, shall serve for the term of two years; and, in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

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25. The Territory reached the required population in 1798; an election was called by the governor's proclamation; and the legislature thus elected met at Cincinnati on February 4, 1799.

26. There were twenty-two members of the first legislature.

27. By the act of February 27, 1809, the General Assembly was authorized to apportion the representatives and the number was limited to a maximum of 12 and a minimum of 9 until there were 6,000 free male white inhabitants, after which the apportionment was to be regulated by the terms of the Ordinance. (Document No. 26.) By the act of March 4, 1814, the House of Representatives was authorized to apportion the State for the election of legislative councillors. (Document No. 31.)

28. By the act of March 3, 1811, any person holding any office of profit by appointment of the governor, except justices of the peace and militia officers, was rendered ineligible to serve as a representative. (Document No. 28.)

29. The right of suffrage was extended and the electoral qualifications reduced by the acts of February 26, 1808 (Document No. 22), and March 3, 1811. (Document No. 28.)

The General Assembly, or Legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by Congress; any three of whom to be a quorum: and the members of the council shall be nominated and appointed in the following manner, to-wit: As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together; and, when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in 500 acres of land,<sup>30</sup> and return their names to Congress; five of whom Congress shall appoint and commission to serve as aforesaid;<sup>31</sup> and, whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress; one of whom Congress shall appoint and commission for the residue of the term.<sup>32</sup> And every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress; five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives, shall have authority to make laws in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill, or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the General Assembly, when, in his opinion, it shall be expedient.

The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity and of office; the governor before the President of Congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the

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30. By the act of March 3, 1811, any person holding any office of profit by appointment of the governor, except justices of the peace and militia officers, was rendered ineligible to serve as a legislative councillor. (Document No. 28.)

31. By an act of February 27, 1809, the qualified voters were authorized to elect the members of the legislative council. (Document No. 26.)

32. By the act of December 15, 1809, vacancies in the office of legislative councillor were filled by a special election called by the Governor. (Document No. 27.)

council and house assembled in one room, shall have authority, by joint ballot, to elect a delegate to Congress,<sup>33</sup> who shall have a seat in Congress, with a right of debating but not of voting during this temporary government.

And, for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory; to provide also for the establishment of States, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest.

*It is hereby ordained and declared by the authority aforesaid,* That the following articles shall be considered as articles of compact between the original States and the people and States in the said territory and forever remain unalterable, unless by common consent, to-wit:

Article 1st. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

Art. 2d. The inhabitants of the said territory shall always be entitled to the benefits of the writ of *habeas corpus*, and of the trial by jury; of a proportionate representation of the people in the legislature; and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers or the law of the land; and, should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, *bona fide*, and without fraud, previously formed.

Art. 3d. Religion, morality, and knowledge, being necessary

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33. The first delegate to Congress was William Henry Harrison who was elected on October 3, 1799. By the act of February 27, 1809 (Document No. 26), the voters were authorized to elect the delegate to Congress.



to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and, in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress: but laws founded in justice and humanity, shall, from time to time, be made for preventing wrongs being done to them, and for preserving peace and friendship with them.

Art. 4th. The said territory, and the States which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by Congress according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes, for paying their proportion, shall be laid and levied by the authority and direction of the legislatures of the district or districts, or new States, as in the original States, within the time agreed upon by the United States in Congress assembled. The legislatures of those districts or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers. No tax shall be imposed on lands the property of the United States; and, in no case, shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those of any other States, that may be admitted into the Confederacy, without any tax, impost, or duty, therefor.

Art. 5th. There shall be formed in the said territory, not less than three nor more than five States;<sup>34</sup> and the boundaries of the States, as soon as Virginia shall alter her act of cession, and consent to the same, shall become fixed and established as follows, to-

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34. This change in the number of States in the Northwest Territory was ratified by Virginia on December 30, 1788. (Document No. 12.)

wit: The Western State in the said territory, shall be bounded by the Mississippi, the Ohio, and Wabash rivers; a direct line drawn from the Wabash and Post St. Vincent's, due North, to the territorial line between the United States and Canada; and, by the said territorial line, to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincent's, to the Ohio; by the Ohio, by a direct line, drawn due North from the mouth of the Great Miami, to the said territorial line, and by the said territorial line. The Eastern State shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: *Provided, however,* and it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that, if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies North of an East and West line drawn through the Southerly bend or extreme of Lake Michigan. And, whenever any of the said States shall have 60,000 free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States in all respects whatever, and shall be at liberty to form a permanent constitution and State government: *Provided,* the constitution and government so to be formed, shall be republican and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than 60,000.

Art. 6th. There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: *Provided, always,* That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.

*Be it ordained by the authority aforesaid,* That the resolutions of the 23d of April, 1784, relative to the subject of this ordinance, be, and the same are hereby, repealed and declared null and void.

Done by the United States, in Congress assembled, the 13th day of July, in the year of our Lord 1787, and of their sovereignty and independence the twelfth.

**11. Requested Change in Virginia Act of Cession (July 7, 1786).**

During the summer of 1786 when the reports for a form of government were being considered, Congress adopted the following resolution requesting Virginia to so far alter her act of cession as to permit the division of the ceded territory into not more than five nor less than three States.

*[Journals of Congress, IV, 663.]*

WHEREAS, it appears, from the knowledge already obtained of the tract of country lying north-west of the river Ohio, that the laying it out and forming it into States of the extent mentioned in the resolution of Congress of the 10th of October, 1780, and in one of the conditions contained in the cession of Virginia, will be productive of many and great inconveniences: That by such a division of the country, some of the new States will be deprived of the advantages of navigation, some will be improperly intersected by lakes, rivers and mountains, and some will contain too great a proportion of barren unimproved land, and of consequence will not for many years, if ever, have a sufficient number of inhabitants to form a respectable government, and entitle them to a seat and voice in the federal council: And, whereas in fixing the limits and dimensions of the new States, due attention ought to be paid to natural boundaries, and a variety of circumstances which will be pointed out by a more perfect knowledge of the country, so as to provide for the future growth and prosperity of each State, as well as for the accommodation and security of the first adventurers. In order therefore that the ends of government may be attained, and that the States which shall be formed, may become a speedy and sure accession of strength to the confederacy:

*Resolved,* That it be, and it hereby is recommended to the legislature of Virginia, to take into consideration their act of cession, and revise the same, so far as to empower the United States in Congress assembled, to make such a division of the territory of the United States lying northerly and westerly of the river Ohio, into distinct republican States, not more than five nor less than three, as the situation of that country and future circumstances may require; which States shall hereafter become members of the federal union, and have the same rights of sovereignty, freedom and independence as the original States, in conformity with the resolution of Congress of the 10th October, 1780.



**12. Alteration of Virginia Deed of Cession (December 30, 1788).**

More than a year after the passage of the Ordinance of 1787, Virginia passed the following act, altering her act of cession in conformity with the demands of Congress and the provisions of the Ordinance of 1787.

[*Miscellaneous Documents, XIX, 70.*<sup>35</sup>]

WHEREAS the United States, in Congress assembled, did, on the seventh day of July, in the year of our Lord one thousand seven hundred and eighty-six, state certain reasons, showing that a division of the territory which hath been ceded to the said United States, by this Commonwealth, into States, in conformity to the terms of cession, should the same be adhered to, would be attended with many inconveniences, and did recommend a revision of the act of cession, so far as to empower Congress to make such a division of the said territory into distinct and republican States, not more than five nor less than three in number, as the situation of that country and future circumstances might require. And the said United States, in Congress assembled, have, in an ordinance for the government of the territory northwest of the river Ohio, passed on the thirteenth of July, one thousand seven hundred and eighty-seven, declared the following as one of the articles of compact between the original States and the people and States in the said territory, viz.:

“ARTICLE 5. There shall be formed in the said territory not less than three, nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established as follows, to wit: The western State in the said territory shall be bounded by the Mississippi, the Ohio, and Wabash Rivers; a direct line drawn from the Wabash and Post Vincent's, due north to the territorial line between the United States and Canada, and by the said territorial line to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincent's to the Ohio; by the Ohio, by a direct line drawn due north from the mouth of the Great Miami to the said territorial line, and by the said territorial line. The eastern State shall be bounded by the last-mentioned direct line, the Ohio, Pennsylvania and the said territorial line: *Provided, however,* and it is further understood and declared,

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35. The Public Domain. Its History, With Statistics. Being Miscellaneous Document No. 45, Part 4, 47th Congress, 2d Session. Compiled by Thomas Donaldson. 1884.

that the boundaries of these three States shall be subject so far to be altered, that, if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted by its delegates into the Congress of the United States, on an equal footing with the original States, in all respects whatever; and shall be at liberty to form a permanent constitution and State government: *Provided*, the constitution and government so to be formed shall be republican, and in conformity to the principles contained in these articles; and so far as it can be consistent with the general interest of the Confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.''

And it is expedient that this Commonwealth do assent to the proposed alteration, so as to ratify and confirm the said article of compact between the original States and the people and States in the said territory:

2. *Be it therefore enacted by the general assembly*, That the afore-recited article of compact between the original States and the people and States in the territory northwest of Ohio River be, and the same is hereby, ratified and confirmed, anything to the contrary in the deed of cession of the said territory by this Commonwealth to the United States notwithstanding.

### 13. **Adaptation of Ordinance of 1787 to Federal Constitution (August 7, 1789).**

Alterations in and additions to the Ordinance of 1787 were necessary from time to time in order to bring that measure into conformity with the Federal Constitution which had gone into operation since its adoption; to correct minor imperfections and supply important omissions; to meet unforeseen contingencies not adequately covered by its provisions; to provide the necessary accommodations for the progressive development of the democratic spirit which demanded a more extensive participation in public affairs; and to more effectually check the growth of political and social abuses. Naturally, these acts became a part of the fundamental law of the Territory, as inviolable as the Ordinance itself, and no local law was valid which palpably infringed any of their provisions.

In order to adapt the Ordinance of 1787 to the Federal Constitutions which became operative in 1789, two years after the adoption of the Ordinance, it was necessary to make certain minor changes. By the provision of Section 4 of the Ordinance, the Territorial Secretary was required to transmit authentic copies of all acts passed by the legislature, all public records of

the district, and the proceedings of the Governor in his executive capacity to the Secretary of Congress every six months. This function was now transferred to the President, as was also, with the advice and consent of the Senate, the power of appointing and removing territorial officers. No provision had been previously made for the administration of the government in the event of the death, removal, resignation or necessary absence of the Governor. By this same act, the Territorial Secretary was authorized to discharge all executive functions in any of the above enumerated contingencies.

[*Annals, First Congress, 2159.*]

AN ACT to provide for the government of the Territory northwest of the river Ohio.

WHEREAS, in order that the ordinance of the United States in Congress assembled, for the government of the Territory northwest of the river Ohio may continue to have full effect, it is requisite that certain provisions should be made so as to adapt the same to the present Constitution of the United States:

*Be it enacted, etc.,* That in all cases in which, by the said ordinance, any information is to be given, or communication made by the Governor of the said Territory to the United States in Congress assembled, or to any of their officers, it shall be the duty of the said Governor to give such information, and to make such communication to the President of the United States; and the President shall nominate, and by and with the advice and consent of the Senate shall appoint all officers which by the said ordinance were to have been appointed by the United States in Congress assembled, and all officers so appointed shall be commissioned by him; and in all cases where the United States in Congress assembled might, by the said ordinance, revoke any commission, or remove from any office, the President is hereby declared to have the same powers of revocation and removal.

Sec. 2. *And be it further enacted,* That in case of the death, removal, resignation, or necessary absence of the Governor of the said Territory, the Secretary thereof shall be, and he is hereby authorized and required to execute all the powers and perform all the duties of the Governor, during the vacancy occasioned by the removal, resignation, or necessary absence of the said Governor.<sup>36</sup>

Approved, August 7, 1789.

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36. The first case of this kind arose in 1790. The first governor of the Territory was Arthur St. Clair who arrived at Marietta on July 9, 1788. On December 30, 1789, Governor St. Clair, Secretary Winthrop Sargent and the judges left Marietta for the west to organize regular county governments. They stopped at Cincinnati long enough to organize Hamilton county and at Clarksville long enough to perfect a temporary organization. Thence, in the early part of 1790, they proceeded to Kaskaskia and had scarcely begun their work when Governor St. Clair was called to Fort Wash-



**14. Printing, Distribution and Repeal of Laws; Official Duties of Territorial Secretary; Personnel of Court; Territorial Seal; Disapproval of Limitation Act (May 8, 1792).**

The Ordinance of 1787 made no provision for the printing and distribution of the territorial laws, an omission which was significant not only to those who were charged with the administration of the laws but to the inhabitants who were expected to yield obedience to its mandates. The governor and judges, in their legislative capacity had authority to adopt a law from one of the States, but they had no authority to enact a new law or to repeal a law which was found to be impracticable, useless or mischievous in its operation.

[*Annals, Second Congress, 1395.*]

AN ACT respecting the government of the Territories of the United States northwest and south of the river Ohio.

*Be it enacted, etc.,* That the laws of the Territory Northwest of the river Ohio, that have been or hereafter may be enacted by the Governor and Judges thereof, shall be printed under the direction of the Secretary of State, and two hundred copies thereof, together with ten sets of the laws of the United States, shall be delivered to the said Governor and Judges, to be distributed among the inhabitants, for their information; and that a like number of the laws of the United States shall be delivered to the Governor and Judges of the Territory Southwest of the river Ohio.

Sec. 2. *And be it further enacted,* That the Governor and Judges of the Territory Northwest of the river Ohio shall be, and hereby are, authorized to repeal their laws by them made, whenever the same may be found to be improper.

Sec. 3. *And be it further enacted,* That the official duties of the Secretaries of the said Territories shall be under the control of such laws, as are or may be in force in the said Territories.

Sec. 4. *And be it further enacted,* That any one of the Supreme or Superior Judges of the said Territories, in the absence of the other Judges, shall be and hereby is authorized to hold a Court.

Sec. 5. *And be it further enacted,* That the Secretary of State provide proper seals for the several and respective public offices in the said Territories.

Sec. 6. *And be it further enacted,* That the limitation act, passed by the Governor and Judges of the said Territory, the

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ington to confer with General Harmar relative to Indian affairs. In the event of the absence of the governor, all executive functions devolved on the secretary and in that capacity he assisted in the adjudication of controverted land claims at Vincennes, and participated in the passage of three laws designed to regulate gambling, traffic in intoxicating liquors and trade with the Indians.

twenty-eighth day of December, one thousand seven hundred and eighty-eight, be and hereby is disapproved.

Sec. 7. *And be it further enacted*, That the expenses incurred by John Cleves Symmes and George Turner, two of the Judges of the said Territory, in sending an express, and in purchasing a boat to go the Circuit, in the year one thousand seven hundred and ninety, shall be liquidated by the officers of the Treasury, and paid out of the Treasury of the United States.

Approved, May 8, 1792.

**15. Favorable Report of House Committee on Creation of Indiana Territory (March 3, 1800).**

The Ordinance of 1787 provided that for the purpose of temporary government the Northwest Territory should be one district, "subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient." The Territory was first divided into two districts for administrative purposes on July 4, 1800, circumstances having arisen which in the opinion of Congress demanded a division. Those circumstances were the impossibility of successfully administering justice and exerting the powers of government over so extensive a territory. The original impulse was given to this movement by the appointment of a House Committee on December 10, 1799, to consider the necessity of making alterations in the judicial system of the Territory and report their opinion on the expediency of dividing the Territory into two distinct and separate governments. After mature consideration, the committee submitted the following report on March 3, 1800.

[*Annals, Sixth Congress, Appendix, 1820.*]

Communicated to the House of Representatives, March 3, 1800.

The committee to whom it was referred to consider and report whether any, and, if any, what, alteration is necessary in the judiciary establishment of the Territory Northwest of the Ohio, and who were directed to report their opinion of the expediency of dividing said Territory into two distinct and separate governments do, in obedience to such direction, make the following report: That parts of said Territory are subject to several serious inconveniences, which require redress from the General Government; most of the evils which they at present experience are, in the opinion of this committee, to be imputed to the very great extent of country at present comprised under their imperfect government. The Territory Northwest of the Ohio, from south-east to northwest, fifteen hundred miles, and the actual distance of travelling from the places of holding courts the most remote from

each other, is thirteen hundred miles, and in a country so sparsely peopled, and so little reclaimed from its native wildness, this distance alone seems to present barriers almost insuperable against the exercise of the functions of government, which always presupposes a knowledge of the condition of the several parts and the practicability of seasonable communication among the several organs.

In the three western counties there has been but one court having cognizance of crimes in five years; and the immunity which offenders experience attracts, as to an asylum, the most vile and abandoned criminals, and at the same time deters useful and virtuous persons from making settlements in such society. The extreme necessity of judiciary attention and assistance is experienced in civil as well as in criminal cases. The supplying to vacant places such necessary officers as may be wanted, such as clerks, recorders, and others of like kind, is, from the impossibility of correct notice and information, utterly neglected. This Territory is exposed, as a frontier, to foreign nations, whose agents can find sufficient interest in exciting or fomenting insurrection or discontent, as thereby they can more easily divert a valuable trade in furs from the United States, and also have a part thereof on which they border, which feels so little the cherishing hand of their proper Government, or so little dread of its energy, as to render their attachment perfectly uncertain and ambiguous. The committee would further suggest that the law of the 3d of March, 1791, granting land to certain persons in the western part of said Territory, and directing the laying out of the same, remains unexecuted; that great discontent, in consequence of such neglect, is excited in those who were interested in the provision of said law, and which require the immediate attention of this Legislature. To administer a remedy to these evils, it occurs to this committee that it is expedient that a division of said Territory into two distinct and separate governments should be made; and that such division be made, by a line beginning at the mouth of the Great Miami river, running directly north, until it intersects the boundary between the United States and Canada.

In which case it is conceived that the western part may be permitted to go into the same stage of government as is now in use in said Territory, as the same is supposed to contain at the present time fifteen thousand inhabitants.

Your committee, therefore, recommend to the House the adoption of the following resolution, viz.:



*Resolved*, That the Territory Northwest of the river Ohio be divided into two distinct and separate governments, by a line beginning at the mouth of the Great Miami river, and running through a north course, until it intersects the boundary line between the United States and Canada.

#### 16. Creation of Indiana Territory (May 7, 1800).

On March 20, 1800, a bill for an act to divide the Northwest Territory into two separate governments was reported in the House. After full discussion, the bill passed the House on March 31 and the Senate on April 21 with amendments, and was then submitted to a conference committee for adjustment. The chief arguments in favor of the passage of the bill were made by Mr. William Henry Harrison who insisted that the government was too unwieldy; that numbers of families had removed to Spanish territory; that the number of inhabitants in the western division of the Territory was at least 15,000; and that it was the general wish of the people that a division should take place. Mr. Robert Goodloe Harper of South Carolina also supported the bill in a speech in which he asserted that a territory 1,000 miles in length and 700 in breadth, divided by an extensive wilderness, inhabited by Indians, was much too large, and the local situation too dissimilar to admit of being one government, either to enact equal laws or to provide for the execution of them. The opposition to the passage of the bill in the House was led by Mr. George Jackson of Virginia whose action was based on the belief that many of the people of the Territory had no knowledge or desire that the proposed division should take place or even that such a measure was under consideration. In his reply to Jackson's argument, Mr. Harrison stated that Mr. Jackson had obtained his information from an interested person who resided near Cincinnati, which would cease to be the seat of government if the proposed bill passed; he knew the information was inaccurate; believed that nine-tenths of the people were in favor of its passage, among whom were a great number of the members of the legislature, and although the Senate amendments had materially weakened the bill he was in favor of its passage in the amended form. The people of the Illinois country were in favor of a division of the Territory because their country was 800 miles in length and 400 in breadth; that many of them had to go 600 miles to a judicial court; that immigrants were very numerous.

[*Annals, Sixth Congress, First Session, 1498.*]

-AN ACT to divide the Territory of the United States northwest of the Ohio, into two separate governments.

*Be it enacted, etc.,* That, from and after the fourth day of July next, all that part of the Territory of the United States Northwest of the Ohio river which lies to the westward of a line beginning at the Ohio, opposite to the mouth of Kentucky river, and running thence to Fort Recovery, and thence north until it shall intersect the territorial line between the United States

and Canada, shall, for the purposes of temporary government, constitute a separate territory, and be called Indiana Territory.

Sec. 2. *And be it further enacted,* That there shall be established within the said Territory a Government in all respects similar to that provided by the ordinance of Congress, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven for the government of the Territory of the United States Northwest of the river Ohio; and the inhabitants thereof shall be entitled to, and enjoy all and singular the rights, privileges, and advantages, granted and secured to the people by the said ordinance.

Sec. 3. *And be it further enacted,* That the officers for the said Territory, who, by virtue of this act shall be appointed by the President of the United States, by and with the advice and consent of the Senate, shall respectively exercise the same powers, perform the same duties, and receive for their services the same compensations, as by the ordinance aforesaid and the laws of the United States, have been provided and established for similar officers in the Territory of the United States Northwest of the river Ohio: And the duties and emoluments of Superintendent of Indian Affairs shall be united with those of Governor: Provided, That the President of the United States shall have full power, in the recess of Congress, to appoint and commission all officers herein authorized; and their commissions shall continue in force until the end of the next session of Congress.

Sec. 4. *And be it further enacted,* That so much of the ordinance for the government of the Territory of the United States Northwest of the Ohio river, as relates to the organization of a General Assembly therein, and prescribes the powers thereof, shall be in force and operate in the Indiana Territory, whenever satisfactory evidence shall be given to the Governor thereof that such is the wish of a majority of the freeholders, notwithstanding there may not be therein five thousand free male inhabitants of the age of twenty-one years and upwards: Provided, That, until there shall be five thousand free male inhabitants of twenty-one years and upwards in said Territory, the whole number of representatives to the General Assembly shall not be less than seven, nor more than nine, to be apportioned by the Governor to the several counties in the said Territory, agreeably to the number of free males of the age of twenty-one years and upwards, which they may respectively contain.

Sec. 5. *And be it further enacted*, That nothing in this act contained shall be construed so as in any manner to affect the Government now in force in the Territory of the United States Northwest of the Ohio river, further than to prohibit the exercise thereof within the Indiana Territory, from and after the aforesaid fourth day of July next: Provided, That, whenever that part of the Territory of the United States which lies to the eastward of a line beginning at the mouth of the Great Miami river, and running thence due north to the territorial line between the United States and Canada, shall be erected into an independent State, and admitted into the Union on an equal footing with the original States, thenceforth said line shall become and remain permanently the boundary line between such State and the Indiana Territory, anything in this act contained to the contrary notwithstanding.

Sec. 6. *And be it further enacted*, That, until it shall be otherwise ordered by the Legislatures of the said Territories, respectively, Chilicothe, on Scioto river, shall be the seat of the Government of the Territory of the United States Northwest of the Ohio river; and that Saint Vincennes, on the Wabash river, shall be the seat of the Government for the Indiana Territory.

Approved, May 7, 1800.

**17. Favorable Senate Report on Creation of Michigan Territory  
(October 27, 1803).**

On October 21, 1803, a memorial of Joseph Harrison and other citizens of Michigan was presented in the Senate asking for the creation of a separate government. This memorial was presented to a select committee which presented the following report on October 27.

*[Annals, Eighth Congress, First Session, 29.]*

The committee to whom was referred the memorial of Joseph Harrison and others, resident in that part of the Indiana Territory which lies north of an east and west line, extending through the southerly extreme of Lake Michigan, report:

That it appears from the census taken under the authority of the United States in the year 1800, the territory above described contained three thousand nine hundred and seventy-two free white inhabitants at that time.

It also appears, from the best information that the committee have been able to obtain, that these inhabitants are separated from the other settlements of the Indiana Territory by a tract of the Indian country, at least three hundred and fifty miles in extent;



and that Vincennes, the seat of Government of the Indiana Territory, and place of residence of the Governor and other officers appointed to govern the same, is still more distant.

The committee are of opinion, that the local situation of the inhabitants of Detroit, and of the adjacent settlements, requires the special attention of the General Government, for reasons too obvious to every one, who will examine their geographical situations, to be enumerated.

On the one side, their settlements adjoin to, and are bounded by, the British Province of Canada; and on the other sides, are wholly encompassed by Indian tribes. Thus situated, and in a quarter so interesting to the Union, it is the opinion of the committee, that every accommodation and arrangement which would tend to populate and strengthen that quarter, and thereby enable the General Government with the least expense to maintain good order, ought to be extended to them. Were even these considerations without any weight, the committee conceive that the unreasonable delays and difficulties which must necessarily exist in the administration of justice, and the other concerns of these inhabitants, detached as they are from Vincennes, the residence of the Governor and other principal officers of the Territory, require that a separate territorial government should be extended to them. Under these impressions your committee respectfully submit the following resolution:

“*Resolved*, That the prayer of the memorial of Joseph Harrison and others ought to be granted, and that all that portion of the Indiana Territory which lies north of a line drawn east from the southernmost extreme of Lake Michigan, until it intersects Lake Erie, and west from the said southernmost extreme of Lake Michigan until it shall intersect the Mississippi river, shall form a separate Territory, and that the said Territory shall, in all respects, be governed by, and according to, the principles and regulations contained in ‘An ordinance for the Government of the Territory of the United States Northwest of the river Ohio,’ passed on the 13th day of July, 1787.”

**18. Unfavorable House Report on Creation of Michigan Territory (December 29, 1803).**

On November 4, 1803, a bill was reported in the Senate providing for the creation of Michigan Territory, which passed on December 6. On December 8, the bill, having been reported to the House, was referred to a select committee who submitted a report opposing the passage of the bill. This report was the subject of an animated debate. The report was supported chiefly

on the grounds that the population around Detroit was too small to justify the expense of supporting a separate territorial government, and that if the advantages derived from a separate government were conferred on them they might, and would be claimed, with equal justice, by several detached settlements in the Mississippi and Louisiana Territories. The report was opposed on the theory that equal justice was due to every member of the American community, and that however small the population it was entitled to the same protection with a community composed of larger numbers; that the distance of this population from St. Vincennes was so great as to deprive them of the benefits resulting from the administration of justice; that Michilimackinac, which exported produce valued at more than \$200,000, and from whose imports the United States derived a revenue of \$17,000, was more than 800 miles from the present seat of government. Thirty-four votes were registered against the report and the bill was then advanced to third reading but was defeated on February 21 by a vote of 58-59.

[*Annals, Eighth Congress, Appendix, 1589.*]

Communicated to the House December 29, 1803.

Mr. Lucas, from the committee appointed on the eighth instant, to whom was committed the bill sent from the Senate, entitled, "An Act to divide the Indiana Territory into two separate governments," made the following report:

That, by the ordinance for the government of the territory north of the river Ohio, it is stipulated that when any of the three divisions, pointed out to form separate States, shall contain 60,000 inhabitants, that division shall become a State in the Union, and have a right to exercise and enjoy a form of government free and republican. That it appears that nearly all the people contemplated to be governed by a territorial government, according to the bill from the Senate, are within the boundaries pointed out by the ordinance to form the State, which is now called the State of Ohio, and that they have a right to be a part of said State, and to be governed in conjunction with the people of said State, until Congress shall think proper to make a State of that and the adjacent country, agreeably to the said ordinance. Of course, your committee cannot recommend to the United States, to take upon themselves at this time, the expenses of a separate territorial government over that part of the country.

From the foregoing considerations, your committee respectfully submit their opinion, that the said bill ought not to be passed by this House.

#### 19. Creation of Michigan Territory (January 11, 1805).

On December 5, 1804, a petition of James May and others of Michigan Territory was presented in the Senate asking for the division of Indiana

Territory. On December 6, a similar petition of "the democratic republicans" of Wayne county, signed by their chairman, Robert Abbot, was also presented. Both of these petitions were referred to a select committee who presented a bill on December 14 which passed the Senate on December 24 and the House on January 7.

[*Annals, Eighth Congress, Second Session, 1659.*]

AN ACT to divide the Indiana Territory into two separate governments.

*Be it enacted, etc.,* That, from and after the thirtieth day of June next, all that part of the Indiana Territory which lies north of a line drawn east from the southerly bend, or extreme, of Lake Michigan, until it shall intersect Lake Erie, and east of a line drawn from the said southerly bend through the middle of said lake to its northern extremity, and thence due north to the northern boundary of the United States, shall, for the purpose of temporary government, constitute a separate Territory, and be called Michigan.

Sec. 2. *And be it further enacted,* That there shall be established within the said Territory, a government in all respects similar to that provided by the ordinance of Congress, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven, for the government of the territory Northwest of the river Ohio; and by an act passed on the seventh day of August, one thousand seven hundred and eighty-nine, entitled, "An act to provide for the government of the territory Northwest of the river Ohio;" and the inhabitants thereof shall be entitled to and enjoy all and singular, the rights, privileges, and advantages granted and secured to the people of the territory of the United States Northwest of the river Ohio by the said ordinance.

Sec. 3. *And be it further enacted,* That the officers of the said Territory, who, by virtue of this act shall be appointed by the President of the United States, by and with the advice and consent of the Senate, shall respectively exercise the same powers, perform the same duties, and receive for their services the same compensations as by the ordinance aforesaid, and the laws of the United States, have been provided and established for similar officers in the Indiana Territory; and the duties and emoluments of Superintendent of Indian Affairs shall be united with those of Governor.

Sec. 4. *And be it further enacted,* That nothing in this act contained shall be construed so as in any manner to affect the government now in force in the Indiana Territory, further than



to prohibit the exercise thereof within the said Territory of Michigan, from and after the aforesaid thirtieth day of June next.

Sec. 5. *And be it further enacted*, That all suits, process, and proceedings, which, on the thirtieth day of June next, shall be pending in the court of any county which shall be included within the said territory of Michigan, and also, all suits, process, and proceedings, which, on the said thirtieth day of June next, shall be pending in the General Court of the Indiana Territory in consequence of any writ of removal, or order for trial at bar, and which had been removed from any of the counties included within the limits of the Territory of Michigan aforesaid, shall, in all things concerning the same, be proceeded on, and judgments and decrees rendered thereon, in the same manner as if the said Indiana Territory had remained undivided.

Sec. 6. *And be it further enacted*, That Detroit shall be the seat of government of the said Territory until Congress shall otherwise direct.

Approved, January 11, 1805.

**20. Additional Compensation of Territorial Judges (March 3, 1807).**

[*Annals, Ninth Congress, Second Session, 1272.*]

AN ACT allowing an additional compensation to the Judges of the Mississippi, Indiana, Michigan, and Louisiana Territories.

*Be it enacted, etc.*, That each of the Judges of the Mississippi, Indiana, Michigan, and Louisiana Territories, appointed under the authority of the United States, be entitled to the annual sum of twelve hundred dollars, in lieu of his present compensation, to commence on the first day of January last.

Approved, March 3, 1807.

**21. Additional Compensation of Territorial Secretaries (December 5, 1807).**

[*Annals, Tenth Congress, First Session, 2813.*]

AN ACT allowing an additional compensation to the secretaries of the Mississippi, Indiana, Louisiana, and Michigan Territories.

*Be it enacted, etc.*, That each of the Secretaries of the Mississippi, Indiana, Louisiana, and Michigan Territories, appointed under the authority of the United States, be entitled to the

annual sum of one thousand dollars, in lieu of his present compensation, to commence on the first day of January next.

Approved, December 5, 1807.

**22. Extension of Suffrage—Ownership of Town Lots (February 26, 1808).**

According to the terms of the Ordinance of 1787, the qualifications for suffrage, aside from being a free white male twenty-one years of age or upward, were: (1) The ownership of 50 acres of land in the district, citizenship in one of the States and residence in the district; or (2) The ownership of fifty acres of land in the district and two years' residence in the district. On February 26, 1808, the right of suffrage, in response to numerous petitions, was slightly extended. Aside from being a free white male of the age of twenty-one years or upwards, a citizen of the United States, and a resident of the Territory for a period of one year, the qualifications were as follows: (1) The ownership of fifty acres of land; (2) The acquisition of fifty acres of land at any time by purchase of the United States; or (3) The ownership of a town lot of the value of \$100.

[*Annals, Tenth Congress, First Session, 2834.*]

AN ACT extending the right of suffrage in the Indiana Territory.

*Be it enacted, etc.,* That every free white male person in the Indiana Territory, above the age of twenty-one years, having been a citizen of the United States, and resident in the said Territory, one year next preceding an election of Representatives, and who has a legal or equitable title to a tract of land of the quantity of fifty acres, or who may become the purchaser from the United States of a tract of land of the quantity of fifty acres, or who holds in his own right a town lot of the value of one hundred dollars, shall be entitled to vote for Representatives to the General Assembly of the said Territory.

Approved, February 26, 1808.

**23. Adverse Report of House Committee on Creation of Illinois Territory (April 11, 1808).**

The actual division of Indiana Territory into two separate territories and the creation of the Territory of Illinois was preceded by a campaign carried on by the presentation of numerous petitions in Congress. On December 18, 1805, a petition of the Legislative Council and House of Representatives of Indiana Territory was presented in the House asking that no division of the Territory be made. On December 19 a similar petition of the Territorial House of Representatives was presented. On January 17, 1806, a petition of the inhabitants of Randolph and St. Clair counties, suggesting the expediency of a division of the Territory, was introduced. All

of these petitions were referred to a select committee, who on February 14 made an unfavorable report, on the grounds that since the Territory had recently entered into the second grade government, the whole expense of the government would fall on the people of one section. On March 26, two petitions of sundry inhabitants of Randolph and St. Clair counties were presented to the House asking that the Territory be divided into two separate governments. During the second session of the 9th Congress, on February 20, 1807, two petitions were presented in the House, one of sundry inhabitants of the Territory in favor of a division, and one from the inhabitants of Randolph county in opposition. Both petitions were referred to a select committee. On April 6, 1808, two petitions of the inhabitants of Randolph and St. Clair counties and a petition of the inhabitants of the Illinois country were presented in the House asking for a division of the Territory, and were referred to a select committee, who submitted an unfavorable report on April 11, 1808, in which the House concurred.

[*Annals, Tenth Congress, First Session, 2067.*]

Mr. Lyon, from the committee to whom were referred the petitions of the people of the counties of Randolph and St. Clair, in the Indiana Territory, made the following report:

That the petitioners state many hardships, inconveniences, and privations, as well as the discouragement of emigration into their country, under which they labor in consequence of a connexion, which they call unnatural, between the two very distant settlements, whose country, by the compact between the United States and the State of Virginia, is ordained to constitute two separate and distinct States.

Among the disadvantages, they state that the inhabitants of their two large and populous counties are subject to be called from one hundred and thirty to one hundred and fifty miles through a wilderness (which, for want of wood and living water, must long remain dreary and difficult to pass through), to attend as suitors, witnesses, &c., as the general court, which is held at Vincennes, has cognizance of every matter in controversy, exceeding the value of fifty dollars.

They state, also, that the country which is to constitute the Eastern State; having three-fifths of the representation in the Territorial Legislature, with all the officers for the administration of the Territorial Government, appointed by the President of the United States, they who live in the country which is to constitute the Western State, are oppressed with taxes, the avails thereof are expended in the country which is to form the Eastern State, and at the discretion of those over whom they can have no control. They pray for a dissolution of this connexion, and the



establishment of a new Territorial Government, consisting of the country which, by the compact, is designated for the Western State, as it is marked out on the map of the United States.

The committee, however, considering the press of important business which must occupy the attention of the National Legislature during the short time proposed for the continuance of the session, the unpromising aspect of our fiscal concerns, and particularly the impolicy of increasing the number of Territorial Governments without its being manifestly necessary, are of opinion that it is inexpedient, at this time, to grant the prayer of the petitioners.

**24. Favorable House Report on Creation of Illinois Territory (December 31, 1808).**

At the second session of the tenth Congress the question of dividing Indiana Territory was taken up with greater success. On November 15, 1808, certain resolutions of the House of Representatives of Indiana Territory adopted on October 11, 1808, were presented in the Senate enumerating the discontents prevailing among the people west of the Wabash river in consequence of their connection with the people east of that river and requesting a separation as the only means of restoring harmony and terminating these discontents. On December 2, the Speaker presented to the House sundry proceedings of the grand jury of St. Clair county at the October term of 1808, stating certain grievances to which the inhabitants of the county were subjected from the connection subsisting with the county lying eastward of the Wabash river. On December 13, a committee of the House was appointed to inquire into the expediency of dividing the Territory. On December 16, a petition of the inhabitants of Knox county was presented in the House opposing the division of the Territory. On December 21, the proceedings of the grand jury of Randolph county, held in November, 1808, was presented in the House, stating the hardships and inconveniences to which the grand jurors and other inhabitants of the county were subjected. On December 31 the House Committee submitted the following report.

*[Annals, Tenth Congress, Second Session, 971.]*

Mr. Thomas from the committee appointed on the thirteenth instant, to inquire into the expediency of dividing the Indiana Territory, made a report thereon; which was read, and committed to a Committee of the Whole on Monday next. The report is as follows:

That, by the fifth article of the Ordinance of Congress for the government of the Territory of the United States Northwest of the river Ohio, it is stipulated that there shall be formed in the said Territory not less than three, nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of

cession, and consent to the same, shall become fixed and established, as follows:

The Western State shall be bounded by the Mississippi, the Ohio, and Wabash rivers; a direct line drawn from the Wabash and Post Vincennes, due north, to the Territorial line between the United States and Canada, and by the said Territorial line to the Lake of the Woods and Mississippi.

The middle State shall be bounded by the said direct line, the Wabash, from Post Vincennes, to the Ohio, by the Ohio, by a direct line drawn due north from the mouth of the Great Miami, to the said Territorial line, and by the said Territorial line.

The Eastern State shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said Territorial line: *Provided, however*, and it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said Territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted by its delegates into the Congress of the United States on an equal footing with the original States, in all respects whatever, and shall be at liberty to form a permanent constitution and State government: *Provided*, the constitution and government so to be formed shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the Confederacy, such admission shall be allowed at an earlier period, and when there shall be a less number of free inhabitants in the State than sixty thousand.

By the aforesaid article, it appears to your committee that the line fixed as the boundary of the States to be formed in the Indiana Territory is unalterable, unless by common consent; that the line of demarcation, which the Wabash affords between the eastern and western portion of said Territory added to the wide extent of wilderness country which separates the population in each, constitute reasons in favor of a division, founded on the soundest policy, and conformable with the natural situation of the country. The vast distance from the settlements of the Wabash to the present seat of Territorial government, renders the administration of justice burdensome and expensive to them in the highest degree. The superior courts of the Territory are, by law,

established at Vincennes; at which place suitors, residing in every part of the Territory, are compelled to attend with their witnesses, which, to those who reside west of the Wabash, amounts almost to a total denial of justice. The great difficulty of travelling through an extensive and loathsome wilderness, the want of food and other necessary accommodations on the road, often presents an insurmountable barrier to the attendance of witnesses; and even when their attendance is obtained, the accumulated expense of prosecuting suits where the evidence is at so remote a distance, is a cause of much embarrassment to a due and impartial distribution of justice, and a proper execution of the laws for the redress of private wrongs.

In addition to the above considerations, your committee conceive that the scattered situation of the settlements over this extensive Territory cannot fail to enervate the powers of the Executive, and render it almost impossible to keep that part of the Government in order.

It further appears to your committee, that a division of the said Territory will become a matter of right under the aforesaid article of the ordinance, whenever the General Government shall establish therein a State government; and the numerous inconveniences which would be removed by an immediate separation, would have a direct tendency to encourage and accelerate migration to each district, and thereby give additional strength and security to those outposts of the United States, exposed to the inroads of a savage neighbor, on whose friendly dispositions no permanent reliance can be placed.

Your committee have no certain data on which to ascertain the number of inhabitants in each section of the Territory; but, from the most accurate information they are enabled to collect, it appears that west of the Wabash there are about the number of eleven thousand, and east of said river about the number of seventeen thousand, and that the population of each section is in a state of rapid increase.

Your committee, after maturely considering this subject, are of opinion that there exists but one objection to the establishment of a separate Territorial government west of the river Wabash, and that objection is based on the additional expense which would, in consequence thereof, be incurred by the Government of the United States. But, it is also worthy of observation that the increased value of the public lands in each district, arising from the public institutions which would be permanently fixed in each,



to comport with the convenience of the inhabitants, and the augmentation of emigrants, all of whom must become immediate purchasers of these lands, would far exceed the amount of expenditure produced by the contemplated temporary government.

And your committee, being convinced that it is the wish of a large majority of the citizens of the said Territory that a separation thereof should take place, deem it always just and wise policy to grant to every portion of the people of the Union that form of government which is the object of their wishes, when not incompatible with the Constitution of the United States, nor subversive of their allegiance to the national sovereignty.

Your committee, therefore, respectfully submit the following resolution:

*Resolved*, That it is expedient to divide the Indiana Territory, and to establish a separate Territorial government west of the river Wabash, agreeably to the ordinance for the government of the Territory of the United States Northwest of the river Ohio, passed on the 13th day of July, 1787.

## **25. Creation of Illinois Territory (February 3, 1809).**

On December 31, the same day on which the report was made, the select committee presented a bill for the division of Indiana Territory. This bill passed the House on January 18 by a vote of 69-37 and the Senate on January 31. The arguments advanced in the House in favor of the bill were that the Wabash river constituted a natural line of demarcation between the eastern and the western portions of the Territory; a wide extent of wilderness country separated the populations of the two divisions; the distance from the settlements west of the Wabash to the seat of government rendered the administration of justice burdensome and expensive in the highest degree, amounting almost to a denial of justice; the scattered situation of the settlements over this extensive country enervated the power of the executive and rendered it almost impossible to keep that part of the government in order; the division of the Territory was a matter of right, under the Ordinance; the inconveniences to be removed by an immediate separation would encourage the speedy population of the Territory; there were about 28,000 inhabitants in the Territory of Indiana and 2,700 between the ages of sixteen and twenty-one in that part to be constituted a new Territory; the expense would be fully compensated to the United States by the increased value of public lands in each district. The arguments against the bill were that officers would be multiplied without any corresponding advantage which was contrary to republican principles; the expense to the United States of the new government would be \$6,950 yearly; the City of Washington contained at least as many people as the portion proposed to be erected into a new territory, and the District of Columbia as many as the whole territory, and it would certainly excite some surprise if Congress were to erect two territorial governments in the District, one on one side of the Potomac, and one on the

other; the creation of a new territory would be convenient to the men who would be appointed governors and judges, but for no one else; there was no other part of the United States in which the same inconvenience was not felt as that complained of by the inhabitants of Indiana Territory; there were many places in different States where the people had to go 200 or 300 miles to the courts; and a compliance with this petition would foster factions and produce more petitions.

[*Annals, Tenth Congress, Second Session, 1808.*]

AN ACT for dividing the Indiana Territory into two separate governments

*Be it enacted, etc.,* That, from and after the first day of March next, all that part of the Indiana Territory which lies west of the Wabash river, and a direct line drawn from the said Wabash river and Post Vincennes, due north to the territorial line between the United States and Canada, shall, for the purpose of temporary government, constitute a separate Territory, and be called Illinois.

Sec. 2. *And be it further enacted,* That there shall be established within the said Territory a government in all respects similar to that provided by the ordinance of Congress, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven, for the government of the Territory of the United States Northwest of the river Ohio; and by an act passed on the seventh day of August, one thousand seven hundred and eighty-nine, entitled, "An act to provide for the government of the Territory Northwest of the river Ohio;" and the inhabitants thereof shall be entitled to, and enjoy all and singular the rights, privileges, and advantages, granted and secured to the people of the Territory of the United States Northwest of the river Ohio, by the said ordinance.

Sec. 3. *And be it further enacted,* That the officers for the said Territory, who, by virtue of this act, shall be appointed by the President of the United States, by and with the advice and consent of the Senate, shall respectively exercise the same powers, perform the same duties, and receive for their services the same compensations as by the ordinance aforesaid, and the laws of the United States, have been provided and established for similar officers in the Indiana Territory. And the duties and emoluments of Superintendent of Indian Affairs shall be united with those of Governor: *Provided,* That the President of the United States shall have full power, in the recess of Congress, to appoint and commission all officers herein authorized, and their

commissions shall continue in force until the end of the next session of Congress.

Sec. 4. *And be it further enacted,* That so much of the ordinance for the Government of the Territory of the United States Northwest of the Ohio river, as relates to the organization of a General Assembly therein, and prescribes the powers thereof, shall be in force, and operate in the Illinois Territory, whenever satisfactory evidence shall be given to the Governor thereof that such is the wish of a majority of the freeholders, notwithstanding there may not be therein five thousand free male inhabitants of the age of twenty-one years and upwards: *Provided,* That until there shall be five thousand free male inhabitants of twenty-one years and upwards in said Territory, the whole number of representatives to the General Assembly shall not be less than seven, nor more than nine, to be apportioned by the Governor to the several counties in the said Territory, agreeably to the number of free males of the age of twenty-one years and upwards, which they may respectively contain.

Sec. 5. *And be it further enacted,* That nothing in this act contained shall be construed so as in any manner to affect the government now in force in the Indiana Territory, further than to prohibit the exercise thereof within the Illinois Territory, from and after the aforesaid first day of March next.

Sec. 6. *And be it further enacted,* That all suits, process, and proceedings, which, on the first day of March next, shall be pending in the court of any county which shall be included within the said Territory of Illinois, and also all suits, process, and proceedings, which, on the said first day of March next, shall be pending in the general court of the Indiana Territory, in consequence of any writ of removal, or order for trial at bar, and which had been removed from any of the counties included within the limits of the Territory of Illinois aforesaid, shall, in all things concerning the same, be proceeded on, and judgments and decrees rendered thereon, in the same manner as if the said Territory had remained undivided.

Sec. 7. *And be it further enacted,* That nothing in this act contained shall be so construed as to prevent the collection of taxes which may, on the first day of March next, be due to the Indiana Territory on lands lying in the said Territory of Illinois.

Sec. 8. *And be it further enacted,* That until it shall be otherwise ordered by the Legislature of the said Illinois Territory,



Kaskaskia, on the Mississippi river, shall be the seat of government for the said Illinois Territory.

Approved, February 3, 1809.

**26. Election of Delegate to Congress and Legislative Councillors (February 27, 1809).**

By the act of February 27, 1809, the qualified electors of the Territory were authorized to elect the delegate to Congress, who had formerly been elected by the legislature. By the same act, the people were empowered to elect the members of the legislative council. These councillors had formerly been appointed by the President from a list of ten nominated by the Lower House.

[*Annals, Tenth Congress, Second Session, 1821.*]

AN ACT extending the right of suffrage in the Indiana Territory, and for other purposes.

*Be it enacted, etc.,* That the citizens of the Indiana Territory entitled to vote for Representatives to the General Assembly thereof, shall, at the time of electing their Representatives to the said General Assembly, also elect one Delegate from the said Territory to the Congress of the United States, who shall possess the same powers heretofore granted to the Delegates from the several Territories of the United States, anything in the ordinance for the government of the said Territory to the contrary notwithstanding.

Sec. 2. *And be it further enacted,* That the sheriffs of the several counties, which now are, or may hereafter be established in the said Territory, respectively, shall, within forty days next after an election for a Delegate to Congress transmit to the Secretary of the Territory a certified copy of the returns from the several townships in their counties respectively. And it shall be the duty of the Governor, for the time being, to give to the person having the greatest number of votes, a certificate of his election.

Sec. 3. *And be it further enacted,* That so soon as the Governor of the said Territory shall divide the same into five districts, the citizens thereof entitled to vote for Representatives to the said General Assembly, shall, in each of the said districts, elect one member of the Legislative Council, who shall possess the same powers heretofore granted to the Legislative Council in the said Territory, and shall hold their offices four years, and no longer; anything in the ordinance for the government of the said Territory to the contrary notwithstanding.

Sec. 4. *And be it further enacted,* That the General Assembly of the said Territory shall have power to apportion the Representatives of the several counties therein, or which may hereafter be established therein, according to the number of free white male inhabitants above the age of twenty-one years, in such counties; Provided, that there be not more than twelve, nor less than nine, of the whole number of Representatives, any act or acts to the contrary notwithstanding, until there shall be six thousand free male white inhabitants, above the age of twenty-one years, in said Territory; after which time, the number of Representatives shall be regulated agreeably to the ordinance for the government thereof.

Approved, February 27, 1809.

**27. Apportionment of Representatives and Vacancies in Office  
(December 15, 1809).**

[*Annals, Eleventh Congress, Second Session, 2511.*]

AN ACT supplemental to an act, entitled "AN ACT extending the right of suffrage in the Indiana Territory, and for other purposes."

*Be it enacted, etc.,* That the Governor of the Indiana Territory, for the time being, be and he is hereby authorized and empowered to apportion the Representatives among the several counties in said Territory, as he shall think proper, having regard to the numbers limited in the fourth section of the act to which this is a supplement, and to issue his writ for the election of such Representatives agreeably to the apportionment which he may make, at such time as he shall deem most convenient for the citizens of the several counties in said Territory.

Sec. 2. *And be it further enacted,* That so soon as the Legislature of the said Territory shall be convened, the number of Representatives in each county thereof shall be regulated by the General Assembly.

Sec. 3. *And be it further enacted,* That when any vacancy shall occur in the Legislative Council, by death, resignation or removal from office, or when from either of said causes there shall be no Delegate from said Territory to the Congress of the United States, the Governor shall in either case be authorized to issue his proclamation, directing an election to be held to supply such vacancy according to law.

Approved, December 15, 1809.

**28. Extension of Suffrage and Disqualification of Placemen as Legislators (March 3, 1811).**

The qualifications for suffrage fixed by the Ordinance of 1787 were rendered more liberal by the act of February 26, 1808. (Document No. 22.) By virtue of the following act, all property qualifications were discontinued. In addition to the age, sex, race and residence qualifications, an elector was required to furnish evidence of having paid a county or Territorial tax. The practice of appointees of the Governor being candidates for the Legislature had aroused the serious opposition of a large element of the electorate and numerous petitions had been forwarded to Congress asking for the passage of a law prohibiting the practice. A provision designed to carry out this suggestion was incorporated in the act of March 3, 1811.

[*Annals, Eleventh Congress, Third Session, 1347.*]

AN ACT to extend the right of suffrage in the Indiana Territory, and for other purposes.

*Be it enacted, etc.,* That each and every free white male person, who shall have attained the age of twenty-one years, and who shall have paid a county or Territorial tax, and who shall have resided one year in said Territory, previous to any general election, and be at the time of any such election a resident of said Territory, shall be entitled to vote for members of the Legislative Council and House of Representatives of the Territorial Legislature, and for a Delegate to the Congress of the United States for said Territory.

Sec. 2. *And be it further enacted,* That the citizens of the Indiana Territory, entitled to vote for Representatives to the General Assembly thereof, may, on the third Monday of April next, and on the third Monday of April biennially thereafter (unless the General Assembly of said Territory shall appoint a different day), elect one Delegate for said Territory to the Congress of the United States, who shall possess the same powers heretofore granted by law to the same.

Sec. 3. *And be it further enacted,* That each and every sheriff that now is or hereafter may be appointed in said Territory, who shall either neglect or refuse to perform the duties required by an act, entitled "An act extending the right of suffrage in the Indiana Territory, and for other purposes," passed in February, one thousand eight hundred and nine, shall be liable to a penalty of one thousand dollars, recoverable by action of debt, in any court of record within the said Territory, one-half for the use of the informer, and the other for the use of the Territory.

Sec. 4. *And be it further enacted,* That any person holding, or



who may hereafter hold, any office of profit from the Governor of the Indiana Territory, (justices of the peace and militia officers excepted), shall be ineligible to, and disqualified to act as a member of the Legislative Council or House of Representatives for said Territory.

Sec. 5. *And be it further enacted*, That each and every sheriff, in each and every county, that now is or hereafter may be established in said Territory, shall cause to be held the election prescribed by this act, according to the time and manner prescribed by the laws of said Territory and this act, under the penalty of one thousand dollars, to be recovered in the manner and for the use pointed out by the third section of this act.

Approved, March 3, 1811.

**29. Residence Qualifications of Territorial Judges and Prohibition of Practice of Law (December 18, 1812).**

[*Annals, Twelfth Congress, Second Session, 1315.*]

AN ACT concerning the district and Territorial Judges of the United States.

*Be it enacted, etc.*, That, hereafter, it shall be incumbent upon the district and territorial judges of the United States, to reside within the districts and territories, respectively, for which they are appointed; and that it shall not be lawful for any judge, appointed under the authority of the United States, to exercise the profession or employment of counsel or attorney, or to be engaged in the practice of the law. And any person offending against the injunction or prohibition of this act, shall be deemed guilty of a high misdemeanor.

Approved, December 18, 1812.

**30. Creation of Offices of United States Attorney and United States Marshal (February 27, 1813).**

[*Annals, Twelfth Congress, Second Session, 1335.*]

AN ACT authorizing the appointment of additional officers in the respective Territories of the United States.

*Be it enacted, etc.*, That there shall be appointed in the respective Territories of the United States a person learned in the law, to act as Attorney of the United States, who shall, besides the usual fees of office, receive an annual salary of two hundred and fifty dollars, payable quarter-yearly, at the Treasury of the

United States; and there shall also be appointed, in each of said Territories, a Marshal, who shall receive the same fees and compensation as is allowed by law to the Marshal of the district of Kentucky.

Approved, February 27, 1813.

**31. Apportionment of Territory for Election of Legislative Councilors (March 4, 1814).**

[*Annals, Thirteenth Congress, Second Session, 2798.*]

AN ACT to establish the mode of laying off the Territory of Indiana into districts, for the election of its members of the Legislative Council.

*Be it enacted, etc.,* That the House of Representatives of the Indiana Territory be and it is hereby empowered, from time to time, to lay off the said Territory into five districts for the election of the members of the Legislative Council of the Territory aforesaid.

Sec. 2. *And be it further enacted,* That the districts established by Governor Harrison, in the year of our Lord one thousand eight hundred and nine, shall remain, as the lawfully authorized districts for the election of the members of the Legislative Council of said Territory, until the House of Representatives thereof shall have exercised the power vested in that body by the first section of this act.

Approved, March 4, 1814.

**32. Composition and Sessions of General Court (February 24, 1815).**

[*Annals, Thirteenth Congress, Third Session, 1920.*]

AN ACT for the regulation of the Courts of Justice of Indiana.

*Be it enacted, etc.,* That the Judges of the General Court of the Indiana Territory shall, in each and every year, hold two sessions of the said court, at Vincennes, in the county of Knox, on the first Mondays in February and September; at Corydon, in the county of Harrison, on the third Mondays in February and September; and at Brookville, in the county of Franklin, on the first Mondays next succeeding the fourth Mondays of February and September; which courts, respectively, shall be composed of at least two of the judges appointed by the Government of the United States; and no person or persons, acting under the authority and appointment of the said Territory, shall be associated with the said judges.

Approved, February 24, 1815.

**33. Conferment of Chancery Jurisdiction on General Court (April 29, 1816).**

[*Annals, Fourteenth Congress, First Session, 1892.*]

AN ACT supplemental to the act, entitled "AN ACT regulating and defining the duties of the Judges of the Territory of Illinois," and for vesting in the Courts of the Territory of Indiana a jurisdiction in chancery cases, arising in the said Territory.

(Sections 1, 2, 3, 4 and 5 regulate and define the duties of the Judges of the Territory of Illinois.)

Sec. 6. *And be it further enacted,* That the General Court of the Territory of Indiana be, and it is hereby authorized and empowered to exercise chancery powers as well as a common law jurisdiction, under such regulations as the Legislature of said Territory may prescribe.

Approved, April 29, 1816.





# Organization of Constitutional Government.





## PART II.

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### THE ORGANIZATION OF A CONSTITUTIONAL GOVERNMENT.

One of the earliest formal petitions for the admission of Indiana Territory to the Union was presented to Congress during the twelfth session of 1811–1812. The House Committee, to whom this petition was referred, reported favorably on the admission of the Territory as soon as its population should amount to 35,000, to be ascertained by a census taken under the authority of the Territory. In response to this recommendation, the Territorial Legislature on August 29, 1814, authorized the tax listers to take a census of the Territory in the year 1815. This was done accordingly and disclosed the fact that the total population of the Territory was 63,897. Having complied with the only requirement prescribed by Congress and having completely fulfilled all conditions prescribed by the Ordinance of 1787, the Legislative Assembly adopted a memorial on December 11, 1815, asking Congress to be admitted to the Union on an equality with the other States. Both houses acted favorably on this petition and an Enabling Act was passed and approved on April 16, 1816. The election of constitutional delegates was held on May 13 and the Constitutional Convention convened on June 10. On June 11, the convention decided that it was expedient to proceed to the framing and adoption of a constitution and the organization of a state government. On June 27, the convention adopted an Ordinance formally accepting the propositions enumerated in the Enabling Act, and on June 29, the Constitution was completed and the convention adjourned. Meantime, a copy of the Constitution had been forwarded to Congress, a representative, two senators and three presidential electors had been chosen and at the beginning of the fourteenth session, Indiana asked formal admission to the Union. The representative to the lower House encountered no opposition and was sworn into office on December 2, 1816, the day on which Congress convened. The credentials of the senators-elect were referred to a select committee and they were sworn into office on December 12. After a brief but spirited contest the

electors were permitted to participate in the election of presidential electors and on December 11, 1816, by an appropriate resolution, Indiana was formerly admitted to the Union.

**34. House Committee's Report on Petition of 1811 Asking Admission to Union (March 31, 1812).**

At the session of the Territorial Legislature which met on November 11, 1811, a petition was adopted asking Congress to admit Indiana Territory to the Union on an equal footing with the original States. This petition was presented in the Senate in Congress on December 31 and in the House on January 1, 1812. On January 13, the Speaker laid before the House a letter of protest signed by James Dill and Peter Jones, two members of the Indiana House of Representatives, opposing the memorial asking the admission of Indiana Territory to the Union. It was the general expectation in the Territory that this petition would be favorably acted upon. General W. Johnston, a member of the Territorial Legislature from Knox County, assured his constituents that "The economical advantages which the general government will derive from this measure, induces me to hazard the belief that it will be acceded to." The petition which was presented in the House was referred to a select committee of which Jonathan Jennings was chairman and was under consideration by this committee for a period of three months. On January 10, in a letter to one of his constituents, Jennings said that the memorial had "met a very favorable reception by the select committee," and he expected a favorable report. He was unable to say whether he would be able to obtain the passage of an act for the admission of Indiana at that time but if not successful at that session, "I doubt not that it will be successful at the next." On March 31, the select committee submitted a report in which they recommended that Indiana Territory should be admitted to the Union whenever its population should amount to 35,000 to be ascertained by a census taken under authority of the Territory.

*[Annals, Twelfth Congress, First Session, 1247.]*

Mr. Jonathan Jennings, from the committee to whom was referred the memorial of the legislature of the Indiana Territory, praying to be admitted into the Union upon an equal footing with the original States, made a report thereon; which was read, and committed to a Committee of the Whole on Monday next. The report is as follows:

That the Territory of Indiana is a part of the original territory northwest of the river Ohio, and includes so much of the latter as was ordained by the ordinance for the government thereof to form a separate and independent State. That the acts of Congress establishing the Territories of Indiana, Michigan, and Illinois, have bounded the territorial limits of the former by the Territory of Michigan on the North; by a line drawn due North from the mouth

of the Great Miami river on the East; by the river Ohio on the South; and by the river Wabash, from its confluence with the Ohio to Vincennes; and from thence by a line to be drawn due north on the West. That the Territory of Indiana has been governed according to the provisions of the ordinance aforesaid, which likewise ordains that the Territory northwest of the Ohio, should be formed into not less than three nor more than five States, and that each might respectively be admitted into the Union with a population less than sixty thousand free inhabitants.

Notwithstanding the General Government has extended the hand of relief to the Territory now under consideration, to the great advantage of its citizens, who must necessarily submit to its temporary existence and authority, by dispensing with some of the most arbitrary features of the ordinance; yet a complete emancipation from a Territorial government is not only desirable, but, in the opinion of your committee, should be granted as soon as it may be compatible with the interest of the United States and the said Territory.

The committee, therefore, submit the following resolution:

*Resolved*, That the Indiana Territory should be admitted into the Union as an independent State, under the conditions of the Constitution of the United States, and a law to be provided for that purpose, whenever the population of its Federal numbers shall amount to thirty-five thousand and the fact thereof shall have been ascertained by a census to be taken under the authority of the said Territory.

### 35. Waller Taylor's Letter Relative to Statehood (June 17, 1812).

The only strictly campaign document relative to the assumption of statehood which is extant in the literature of the period was published in the *Western Sun* of June 23, 1812, by Waller Taylor who was a candidate for Delegate to Congress.

[*Western Sun*, June 23, 1812.]

With respect to the territories assuming the state government, my own opinion is, that it should be entered into as soon as the people shall think themselves able to support it, however, I shall expect instructions, and those instructions, whatever they may be, coming from the majority of the people, or from the Legislature, I shall punctually obey.



**36. Authorizing an Official Census of Indiana Territory (August 29, 1814).**

In response to the recommendation made by the House of Representatives on March 31, 1812 (Document No. 34), the Territorial Legislature, on August 29, 1814, adopted a resolution requiring the listers of taxes to take a census of the free inhabitants of the Territory in the year 1815, at the same time that property was listed for taxation, designating in separate lists the total number of free inhabitants and the total number of free male white inhabitants above the age of twenty-one years.

[*Acts, First Session, Fifth General Assembly of Indiana Territory, 92.*]

A joint resolution of both houses.

*Resolved by the Legislative Council and House of Representatives,* That the several listers for the year 1815 be and they are hereby authorized and required at the same time they take lists of the taxable property in their respective counties, to take a list of the free inhabitants within the same, noting in a separate list the free male white inhabitants above the age of 21 years, and the said list to return together with the lists of the taxable property to the clerks of their respective counties, to the intent that it may be ascertained and known when there shall be sixty thousand free inhabitants within the Indiana Territory; and the clerks of the several courts are hereby required to transmit the same to the House of Representatives, at the same time and in the same manner that they transmit statements of the Territorial levies within their counties, and the courts of claims in the several counties, shall make to the listers reasonable allowances for said services.

Approved August 29, 1814.

And that the said several listers, before they enter upon the duties of their office, shall take an oath or affirmation before some magistrate or other person duly appointed to administer oaths, to take the census of inhabitants within their districts truly according to the best of their information, and return the same with list of taxables.

**37. Official Census of Indiana Territory.**

The report of the official census of Indiana Territory, authorized by the resolution of August 29, 1814 (Document No. 36), was submitted to the House of Representatives on January 5, 1816.

[*Annals, Fourteenth Congress, First Session, 460.*]

Corydon, February 24, 1816.

Dear Sir: Agreeably to your request, I embrace the first moment within my power to send you a certified statement of the

census of the Indiana Territory, taken from the official returns of the listers, certified by the clerks of the various counties, and forwarded to the House of Representatives of the said Territory, at their session which commenced on the 4th day of December, 1815, to wit:

Counties.	White Males of 21 and upwards.	Total No.
Wayne.....	1,225	6,407
Franklin.....	1,430	7,370
Dearborn.....	902	4,424
Switzerland.....	377	1,832
Jefferson.....	874	4,270
Clark.....	1,387	7,150
Washington.....	1,420	7,317
Harrison.....	1,056	6,975
Knox.....	1,391	8,068
Gibson.....	1,100	5,330
Posey.....	320	1,619
Warrick.....	280	1,415
Perry.....	350	1,720*
		<hr/> 63,897

I, William Hendricks, Clerk of the House of Representatives, do hereby certify that the within statement is correct. Given under my hand the day above written.

W. HENDRICKS,  
Clerk of the House of Representatives.

\*From the county of Perry, no listers book had been received from the clerk, but the representative of that county says he had the number above stated from good authority.

### 38. Memorial to Congress Asking Admission to Union (December 11, 1815).

The formal petition of the Legislative Assembly of Indiana Territory asking admission to the Union was adopted on December 11, 1815. This memorial set forth that Indiana Territory had a population in excess of 60,000, and that inasmuch as all the requirements of the Ordinance of 1787 had been complied with, that Congress should authorize an election to be held on the first Monday of May, 1816, to select constitutional delegates to frame a state government or to provide for the assembling of representatives to organize a state government at some time in the future. Among the concessions demanded were: (1) seven per cent of all money received for the sale of public lands; (2) the grant of one township of land for the endowment of an academy;

(3) the grant of one section in each township for the use of common schools; (4) the grant to the State of all coal mines and salt licks; (5) the reservation of one entire township for the establishment of a college; (6) the grant of one entire township for a seat of government; and (7) the exclusion of slavery. They also suggested an apportionment of the delegates to the convention which was adopted by Congress, with the exception of Harrison county.

[*Western Sun*, January 27, 1816.]

To the honorable the Senate and House of Representatives of the United States, in Congress assembled:

The memorial of the Legislative Council and House of Representatives of the Indiana Territory, assembled at the town of Corydon, in the year 1815, in behalf of their constituents, respectfully sheweth:—

That whereas the ordinance of Congress for the government of this Territory has provided, “That whenever there shall be sixty thousand free inhabitants therein, this Territory shall be admitted, **into the** Union on an equal footing with the original States;” and whereas by a census taken by the authority of the Legislature of this Territory, it appears from the returns that the number of free white inhabitants exceeds sixty thousand, we, therefore, pray the honorable Senate and House of Representatives, in Congress assembled, to order an election, to be conducted agreeably to the existing laws of this Territory, to be held in the several counties of this Territory on the first Monday of May, 1816, for representatives to meet in Convention, at the seat of government of this territory, the ——— day of ——— 1816, who, when assembled, shall determine by a majority of the votes of all the members elected, whether it will be expedient to go into a State government; and if it be determined expedient, the convention thus assembled shall have the power to form a constitution and frame of government; or if it be deemed inexpedient to provide for the election of representatives to meet in convention, at some future period, to form a constitution. And whereas the people of this territory have made great sacrifices, by settling on the frontiers, where they have been exposed to dangers and hardships of almost every description, by which means the lands of the U. S. have been greatly increased in value we feel confident that congress will be disposed to grant us 7 per cent, on all monies received at any of the U. S. land offices, from the first day of April, 1816, for lands already sold or hereafter to be sold, lying in this territory; such



percentage to be at the disposal of this government in such way as may be judged most conducive to the general welfare. It is expected by us that the general government will be disposed to confirm to us her grant of township No. 2, south of range 11, west of the second principal meridian, granted to the Indiana Territory for the use of an academy; also, the reserved sections 16, in that portion of the territory where the Indian title has already been extinguished as well as that which may be hereafter purchased of the Indians, to be at the disposal of the future State for the use of schools; and it is further requested and expected, that all coal mines and salt licks which may be reserved by the U. S. (with a sufficiency of land to work them to effect) will be granted to the future State, as well as where the Indian title is relinquished as where it is not, as soon as said relinquishment is obtained by the U. S. Furthermore, as it is conceived by us that the promotion of useful knowledge is the best guarantee to our civil institutions, and as congress must know something of the difficulties of raising money in new counties for the use of universities, we think we do ourselves but justice in asking a reserve of one entire township, for the support of a college, to be located at some suitable place on the U. States' lands in this territory. And whereas in the counties of Knox, Gibson and Clark, in said territory, a great quantity of the lands in said counties are claimed by private individuals, and confirmed to them by various laws of congress, which lands are so located that those counties will be deprived of the benefits from the 16th section, reserved by the laws of congress for the use of schools. It is, therefore, expected that congress will reserve an equivalent in lands for the use of schools in said counties, in proportion to the number of the 16th section now the property of individuals in said counties.—As it is deemed good policy that every State should have its seat of government as nearly central as the local situation of the country will permit, and as such site proper for the permanent seat is not at this time at the disposal of this territory or the general government, it is expected that congress will whenever the Indian title shall be extinguished, grant us a township of 6 miles square to be selected by such persons as the future State may appoint.

And whereas Congress will receive the most correct information from this body to enable them to proportion the number of representatives to the convention in the different counties we recommend the following, as proportioned to the census of each county according to their present boundaries, to wit:

Wayne.....	4	Clark.....	5
Franklin.....	5	Posey.....	1
Dearborn.....	3	Washington.....	5
Gibson.....	4	Harrison.....	4
Perry.....	1	Knox.....	5
Switzerland.....	1	Warrick.....	1
Jefferson.....	3		

And whereas the inhabitants of this territory are principally composed of emigrants from every part of the union, & as various in their customs and sentiments as in their persons, we think it prudent at this time to express to the general government our attachment to the fundamental principles of legislation, prescribed by congress in their ordinance for the government of this territory particularly as respects personal freedom and involuntary servitude, and hope that they may be continued as the basis of our constitution.

(Signed)

DENNIS PENNINGTON,

Speaker of the House of Representatives.

DAVID ROBB,

President of the Legislative Council.

### 39. **Favorable House Committee Report on Admission of Indiana Territory (January 5, 1816).**

The memorial of Indiana Territory, adopted December 11, 1815, asking to be admitted to the Union, was presented in the House on December 28 and in the Senate on January 2. Both petitions were referred to select committees. On January 5, the House Committee of which Mr. Jonathan Jennings was chairman returned a favorable report accompanied by a bill for an Enabling Act.

[*Annals, Fourteenth Congress, First Session, 459.*]

Mr. Jennings, from the committee appointed on the 28th ultimo, on the petition of the legislature of the Territory of Indiana, made a detailed report, which was read; when, Mr. J. reported a bill to enable the people of the Indiana Territory to form a constitution and State government, and for the admission of such State into the Union; on an equal footing with the original States; which was read twice, and committed to a Committee of the Whole to-morrow.

The report is as follows:

That the said Territory is bounded on the East by the State of Ohio; on the south by the State of Kentucky; on the west by the river Wabash, from its mouth to a point opposite the town of Vincennes, and from thence by a due north line until it intersects a

due east and west line which shall touch the southern extreme of Lake Michigan; and on the north by the line last described; that the said Territory is a portion of the Territory northwest of the river Ohio, which, by the ordinance for the government thereof, was ordained to constitute not less than three nor more than five States; that the ordinance aforesaid, whenever the Territory of Indiana shall possess sixty thousand free inhabitants, guaranties to those inhabitants the benefit of being admitted into the Union upon an equal footing with the original States; that the ordinance aforesaid not having declared under what authority the population of the said Territory should be ascertained, to complete their title to an admission into the Union, the legislature thereof, after having, by actual census, ascertained that the Territory of Indiana possesses a population of upwards of sixty thousand free inhabitants, have deemed it the most prudent and respectful to submit to congress the result of that census, and ask the passage of a law to enable the people of said Territory to form a constitution and State Government.

Your committee, believing the said Territory to possess a population of sixty thousand free inhabitants, at least, deem it unnecessary to offer any further reasons in support of the expediency of granting the principal prayer of the memorialists; and, therefore, beg leave to report a bill to enable the people of the Territory of Indiana to form a constitution and State government, on conditions not less advantageous and similar to those heretofore granted to other Territories of the United States.

#### 40. The Enabling Act (April 19, 1816).

The bill for the Enabling Act was reported by the select committee of which Mr. Jonathan Jennings was chairman on January 5, 1816. The bill passed the House on March 30 by a vote of 108-3, and was reported to the Senate. Among the amendments proposed in the Senate was one designed to extend the right of suffrage by striking out that clause of the third section which provides that an elector qualified to participate in the election of delegates "shall have paid a county or territorial tax." This amendment was lost by a vote of 9-13. On April 13, the bill passed the Senate and was approved on April 19, 1816. Apparently, in response to a memorial communicated by Daniel C. Lane and Patrick Shields, the apportionment of constitutional delegates to Harrison county was increased from four to five.

[*Annals, Fourteenth Congress, First Session, 1841.*]

AN ACT to enable the people of the Indiana Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States.

*Be it enacted, etc.,* That the inhabitants of the Territory of



Indiana be, and they are hereby, authorized to form for themselves a constitution and State government, and to assume such name as they shall deem proper; and the said State, when formed, shall be admitted into the Union upon the same footing with the original States, in all respects whatever.

Sec. 2. *And be it further enacted*, That the said State shall consist of all the territory included within the following boundaries, to wit: bounded on the east by the meridian line which forms the western boundary of the State of Ohio; on the south by the river Ohio, from the mouth of the Great Miami river to the mouth of the river Wabash; on the west by a line drawn along the middle of the Wabash from its mouth, to a point where a due north line, drawn from the town of Vincennes, would last touch the northwestern shore of the said river; and from thence, by a due north line, until the same shall intersect an east and west line, drawn through a point ten miles north of the southern extreme of Lake Michigan; on the north by the said east and west line, until the same shall intersect the first mentioned meridian line which forms the western boundary of the State of Ohio: *Provided*, That the convention hereinafter provided for, when formed, shall ratify the boundaries aforesaid, otherwise they shall be and remain as now prescribed by the ordinance for the government of the territory northwest of the river Ohio: *Provided*, also, That the said State shall have concurrent jurisdiction on the river Wabash, with the State to be formed west thereof, so far as the said river shall form a common boundary to both.

Sec. 3. *And be it further enacted*, That all male citizens of the United States, who shall have arrived at the age of twenty-one years, and resided within the said Territory at least one year previous to the day of the election, and shall have paid a county or territorial tax; and all persons having in other respects the legal qualifications to vote for representatives in the General Assembly of the said Territory, be, and they are hereby, authorized to choose representatives to form a convention, who shall be apportioned amongst the several counties within the said Territory, according to the apportionment made by the legislature thereof at their last session, to wit: from the county of Wayne, four representatives; from the county of Franklin, five representatives; from the county of Dearborn, three representatives; from the county of Switzerland, one representative; from the county of Jefferson, three representatives; from the county of Clark, five representatives; from the county of Harrison, five representatives; from the

county of Washington, five representatives; from the county of Knox, five representatives; from the county of Gibson, four representatives; from the county of Posey, one representative; from the county of Warrick, one representative; and from the county of Perry, one representative. And the election for the representatives aforesaid shall be holden on the second Monday of May, one thousand eight hundred and sixteen, throughout the several counties in the said Territory, and shall be conducted in the same manner, and under the same penalties, as prescribed by the laws of said Territory, regulating elections therein for members of the House of Representatives.

Sec. 4. *And be it further enacted,* That the members of the convention thus duly elected be, and they are hereby, authorized to meet at the seat of the government of the said Territory, on the second Monday of June next; which convention, when met, shall first determine, by a majority of the whole number elected, whether it be or be not expedient, at that time, to form a constitution and State government for the people within the said Territory; and if it be determined to be expedient, the convention shall be, and hereby are, authorized to form a constitution and State government; or, if it be deemed more expedient, the said convention shall provide by ordinance for electing representatives to form a constitution or frame of government; which said representatives shall be chosen in such manner, and in such proportion, and shall meet at such time and place as shall be prescribed by the said ordinance, and shall then form, for the people of said Territory, a constitution and State government: *Provided,* That the same, whenever formed, shall be republican, and not repugnant to those articles of the ordinance of the thirteenth of July, one thousand seven hundred and eighty-seven, which are declared to be irrevocable between the original States and the people and States of the Territory northwest of the river Ohio; excepting so much of said articles as relate to the boundaries of the States therein to be formed.

Sec. 5. *And be it further enacted,* That, until the next general census shall be taken, the said State shall be entitled to one representative in the House of Representatives of the United States.

Sec. 6. *And be it further enacted,* That the following propositions be, and the same are hereby, offered to the convention of the said Territory of Indiana, when formed, for their free acceptance

or rejection which, if accepted by the convention, shall be obligatory upon the United States.

First. That the section numbered sixteen in every township, and, when such section has been sold, granted, or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such township, for the use of schools.

Second. That all salt springs within the said Territory, and the lands reserved for the use of the same, together with such other lands as may, by the President of the United States, be deemed necessary and proper for working the said salt springs, not exceeding, in the whole, the quantity contained in thirty-six entire sections shall be granted to the said State, for the use of the people of the said State, the same to be used under such terms, conditions, and regulations, as the legislature of the said State shall direct; provided the said legislature shall never sell nor lease the same for a longer period than ten years at any one time.

Third. That five per cent of the net proceeds of the lands lying within the said Territory, and which shall be sold by Congress from and after the first day of December next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of which three-fifths shall be applied to those objects within the said State, under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said State, under the direction of Congress.

Fourth. That one entire township, which shall be designated by the President of the United States, in addition to the one heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the legislature of the said State, to be appropriated solely to the use of such seminary by the said legislature.

Fifth. That four sections of land be, and the same are hereby, granted to the said State for the purpose of fixing their seat of government thereon; which four sections shall, under the direction of the legislature of said State, be located, at any time, in such township and range as the legislature aforesaid may select, on such lands as may hereafter be acquired by the United States from the Indian tribes within the said Territory: *Provided*, That such locations shall be made prior to the public sales of the lands of the United States surrounding such location: *And provided always*, That the five foregoing propositions herein offered, are on the condition that the convention of the said State



shall provide, by an ordinance irrevocable, without the consent of the United States, that every and each tract of land sold by the United States, from and after the first day of December next, shall be and remain exempt from any tax laid by order, or under any authority of the State, whether for State, county, or township, or any other purpose whatever, for the term of five years, from and after the day of sale.

Approved, April 19, 1816.

**41. Jennings's Letter to his Constituents Relative to Enabling Act (April 16, 1816).**

On April 16, 1816, three days after the Enabling Act had passed the Senate, Jonathan Jennings communicated the following open letter to his constituents relative to the provisions of the Enabling Act.

*[Western Sun, May 11, 1816.]*

Washington City, April 16th, 1816.

. . . The act to enable the people of Indiana to form a constitution and State government has passed both Houses of Congress, and will undoubtedly receive the President's signature. The act fixes the second Monday of May next, for the election of members of the convention in the several counties. Each county has the number of members to elect, as were allotted to each by the Territorial legislature except the county of Harrison. Every citizen qualified to vote for members of the Territorial legislature is qualified to vote for members of the convention, and the second Monday of June next is fixed by the act for the meeting of the convention when elected at the seat of Government. The times fixed for the election and meeting of the convention, are as well suited to every interest and circumstance connected with the proposed important change of our form of government as I was enabled to select when every consideration was duly weighed, and I trust will be so considered when the convention shall act officially on the subject. With regard to the grants and conditions contained in this act, the convention when met will be able to form a correct estimate. Allow me, however, to state that they are at least as advantageous if not more so, than those granted to any other Territory on similar occasions. . . .

Very respectfully,

I am very obediently yours,

JONATHAN JENNINGS.

**42. Notice of Election of Constitutional Delegates (May 2, 1816).**

The following is the official notice of the election of constitutional delegates which was given in Knox county.

[*Western Sun, May 4, 1816.*]

On Monday the 13th inst. an election will be held in the different townships in this county, at the following places for five persons to represent this county in the convention to form a constitution—in Vincennes township, at the court house; in Decker township, at the house of Adam Harness; in Harrison township, at the house of George Leech; in Palmyra township, at the house of William Purcell; in Busseron township, at the house of Joseph Latshaw; in Widner township, at the house of John Widner; in Hawkins township, at Liverpool; and in Perry township, at the house of Samuel Perry.

B. V. BECKES, S. K. C.

May 2, 1816.

**43. Expediency of Adopting a Constitution (June 11, 1816).**

By the terms of the Enabling Act of April 19, 1816, the Convention when met, was required to first determine, by a majority of the votes of all the members elected, whether it was expedient, at the time, to form a constitution and State government. If it was determined to be expedient, the Convention was then authorized either to prepare and adopt a constitution and provide a State government at once, or to provide for the election of representatives to form a constitution and State government at some future time. On the afternoon of June 10, the first day of the convention, Mr. Ezra Ferris of Dearborn County submitted a resolution to the consideration of the Convention declaring it to be expedient at the time to proceed to the formation of a constitution and State government. On motion of John Johnson of Knox County, the further consideration of the resolution was postponed until June 11. On the afternoon of June 11, the Convention in committee of the whole, considered the resolution and adopted it without amendment, by a vote of 34-8. The resolution as adopted is as follows:

[*Convention Journal, 6.*]

Whereas, by an act of Congress, approved the 19th of April, 1816, to enable the people of the Indiana territory to form a constitution and State government, and for the admission of the same into the Union on the same footing with the original States, it is provided, that the convention, when met, shall first determine, by a majority of the votes of all the members elected, whether it be

or be not expedient, at that time, to form a constitution and State government.

*Resolved*, therefore, by the representatives of the people of Indiana, met in convention at Corydon, on the 10th day of June, A.D. 1816, that it is expedient, at this time, to proceed to form a constitution and State government.

#### 44. Rules and Orders (June 11, 1816).

On June 10, a committee of five members was appointed to prepare rules for the government of the convention. Until the submission and adoption of this report, the rules for conducting business in the territorial legislature, as far as applicable, were observed. On June 11, the committee reported twenty-seven rules which were adopted. Several amendments were made; the rules in the amended form are not given, but it is reasonably clear from the context that the rules as given contain at least some of the corrections and amendments proposed.

[*Convention Journal*, 7.]

I. The president shall take the chair every day at the hour to which the convention shall have adjourned on the preceding day; shall immediately call the members to order, and on the appearance of a quorum shall cause the journals of the preceding day to be read.

II. The president shall preserve decorum and order; may speak to points of order in preference to other members, rising from the chair for that purpose, and shall decide questions of order, subject to an appeal to the convention by any one member.

III. The president, rising from his seat, shall distinctly put the question in this form, viz. You who are of opinion that (as the case may be) say aye—contrary opinion, say no.

IV. If the president doubt, or a division be called for, the members shall divide: Those in the affirmative first rising from their seats, and afterwards those in the negative.

V. Any member may call for the statement of the question, which the president may give sitting.

VI. The president, with five members, shall be a sufficient number to adjourn; seven to call a house and send for absent members, and make an order for their censure or acquittal; and a majority of the whole number be a quorum to proceed to business.\*

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\*The only amendment recorded was designed to strike out of the sixth article the following words: "consisting of two-thirds of the whole number elected." The amendment was adopted by a vote of 25-17. The amendment is manifestly ambiguous.



VII. When a member is about to speak in debate, or deliver any matter to the convention, he shall rise from his seat and respectfully address himself to Mr. President.

VIII. If any member, in speaking, or otherwise, transgress the rules, the president shall, or any member may, call to order, in which case, the member so called to order, shall immediately sit down, unless permitted to explain; and the convention shall, if applied to, decide on the case, but without debate. If the decision be in favor of the member called to order, he shall be at liberty to proceed; if otherwise, and the case require it, he shall be liable to the censure of the convention.

IX. When two or more happen to rise at the same time, the president shall name the person who is first to speak.

X. No member shall speak more than twice to the same question, without leave of the convention.

XI. Whilst the president is putting a question, or addressing the convention, none shall walk across the room; nor when a member is speaking enter on private discourse, or pass between him and the chair.

XII. No member shall vote on any question who was not present when the question was put.

XIII. Upon calls of the convention for taking the yeas and nays on any question, the names of the members shall be called alphabetically, and each member shall answer from his seat.

XIV. Any member shall have a right to call for the yeas and nays, provided he shall request it before the question is put.

XV. When a motion is made and recorded, it shall be stated by the president, or being in writing, shall be read aloud by the secretary, and every motion shall be reduced to writing if the president or any member request it.

XVI. Any member may call for a division of the question where the sense will admit of it.

XVII. Each member shall particularly forbear personal reflections, nor shall any member name another in argument or debate.

XVIII. After a motion is stated by the president, or read by the secretary, it shall be deemed in possession of the convention, but may be withdrawn at any time before the decision or amendment.

XIX. When a question is under debate, no motion shall be received unless it be the previous question, or for amending or committing the original motion or subject in debate.

XX. The previous question shall be in this form—"shall the main question be now put?" It shall only be admitted when demanded by three members, and until it is decided, shall preclude all amendment and further debate.

XXI. In taking the sense of the convention, a majority of the votes of the members present shall govern.

XXII. No resolution, section or article, in the constitution, shall be finally concluded and agreed upon until the same shall have been read on three several days, unless a majority of two-thirds may think it necessary to dispense with this rule, which vote shall be decided without debate.

XXIII. The convention shall resolve itself into a committee of the whole when deemed necessary, and when in committee of the whole shall be governed by the foregoing rules, except that in committee of the whole any member may speak as often as he may think proper.

XXIV. The president shall appoint committees liable to addition or amendment on the motion of any member, unless otherwise directed by the convention.

XXV. A motion to adjourn shall always be in order, and be decided without debate.

XXVI. On all questions when the yeas and nays are demanded, the president shall vote.

XXVII. The president may at any time leave the chair, and nominate some member to take the chair, who shall preside during the absence of the president.

#### **45. Ordinance Accepting Propositions Enumerated in Enabling Act (June 27, 1816).**

By the terms of the Enabling Act of April 19, 1816, Congress submitted two important propositions to the convention, an approval of which was indispensable to the formation of an acceptable constitution and state government. The first of these propositions related to the ratification of the state boundaries, and the second to the exemption of public lands from taxation for a period of five years from and after December 1, 1816. The boundaries of the proposed State of Indiana were described in the Enabling Act, and the convention was required to ratify these prescribed boundaries, or failing to do so, the boundaries were to remain "as now prescribed by the ordinance for the government of the territory northwest of the river Ohio." The second proposition was submitted to the convention for its free acceptance or rejection. Five subordinate propositions, however, depended on the concession by the State to exempt public lands from taxation as prescribed by Congress. These five subsidiary propositions were advantageous to the State and included the following important reservations: (1) reserving section sixteen in each township for the use of the common schools;

(2) reserving all salt springs and lands appurtenant thereto, not exceeding thirty-six entire sections, to the use of the State; (3) reserving five per cent of the net proceeds of lands sold after December 1, 1816, for the construction of public roads and canals, three-fifths of all revenue so realized to be applied to the construction of intra-state roads and canals, under the direction of the State legislature, and two-fifths of such revenue to be applied to the construction of inter-state roads and canals, under the direction of Congress; (4) reserving one entire township for the support of a seminary of learning; and (5) reserving four sections of land for a seat of government of the new State. After mature consideration, the convention accepted all of these propositions without reservation. On June 21, the following resolution, after consideration by the committee of the whole, was adopted, without amendment, by a vote of 37-4.

[*Convention Journal*, 44.]

*Resolved*, That a committee be appointed to prepare and report a resolution, accepting the propositions of Congress, as expressed in their act of the 19th April, 1816, both as regards the boundaries of the State and the donations.

On June 22, the President of the Convention appointed as this committee, James Dill, William H. Eads, Solomon Manwaring, Daniel C. Lane and James Smith, who reported a resolution the same day. This resolution was adopted, without amendment, by a vote of 36-5.

[*Original Ordinance*.]

Be it ordained by the Representatives of the people of the Territory of Indiana, in convention met at Corydon, on Monday the tenth day of June, in the year of our Lord eighteen hundred and sixteen: That we do, for ourselves and our posterity, agree, determine, declare, and ordain; that we will, and do hereby, accept the propositions of the Congress of the United States, as made and contained in their act of the nineteenth day of April eighteen hundred and sixteen, Entitled "an act to enable the people of the Indiana Territory to form a State Government, and constitution, and for the admission of such state into the union, on an equal footing with the original States."

And we do, further for ourselves and our posterity, hereby ratify, confirm, and establish the boundaries of the said State of Indiana as fixed prescribed, laid down, and established in the act of Congress aforesaid; and we do also further for ourselves and our posterity, hereby agree, determine, declare and ordain; That each and every tract of land sold by the united States, lying within the said state and which shall be sold, from and after the first day of December next, shall be and remain exempt from any tax, laid by order or under any authority of the said State of In-



diana, or by, or under the authority of the General Assembly thereof; whether for State County or Township, or any other purpose whatever, for the term of five years from and after the day of sale of any such tract of land; and we do moreover for ourselves, and our posterity, hereby declare and ordain that, this ordinance and every part thereof shall forever be, and remain irrevocable and inviolate without the consent of the united States in Congress assembled, first had and obtained for the alteration thereof, or any part thereof.

JONATHAN JENNINGS,  
President of the Convention.

June 29th, 1816—Attest.  
William Hendricks, Secretary.

#### 46. The Constitution of 1816 (June 29).

Pursuant to a series of twelve resolutions submitted for the consideration of and adopted by the Convention on June 12, 1816, committees were appointed by the President to prepare and report to the Convention, articles on the following subjects: A bill of rights and preamble; the distribution of the powers of government; the legislative department; the executive department; the judicial department; impeachments; general provisions not properly comprehended in any other article; the mode of revising the constitution; the change of government, preservation of existing laws, and appeals from territorial to State courts; education; militia; the elective franchise and elections. The members of these committees were appointed the same day. On June 13, a resolution was adopted providing for the appointment of a committee to prepare and report an article relative to prisons, which was appointed the same day. On June 13, the committee relative to impeachments was discharged from any further attention to the subject. On June 14, the Committee on Prisons was discharged from further consideration of the subject. On June 19, a resolution was adopted providing for the creation of a Committee on Banks and Banking Companies and another relative to the appointment of sheriffs, coroners, and other county officers. The Banking Committee was appointed on June 20. The several articles as submitted by these committees, the amendments and additions made thereto on the floor of the Convention and in committee of the whole, and the Constitution as finally adopted, with the verbal and other changes recommended by the Committee on Revisions are here set forth.

*[Original Constitution.]*

#### PREAMBLE.<sup>1</sup>

We the Representatives of the people of the Territory of In-

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1. Reported by Committee on Bill of Rights and Preamble on June 14. Considered in committee of the whole on June 19, amended and ordered engrossed. Read second time on June 21 and 22, and amended. Reported back to the convention on June 25 by the Committee on Revisions, and ordered engrossed for third reading. Read a third time and passed on June 27.

diana, in Convention met, at Corydon, on monday the tenth day of June in the year of our Lord eighteen hundred and sixteen, and of the Independence of the United States, the fortieth, having the right of admission into the General Government, as a member of the union, consistent with the constitution of the United States, the ordinance of Congress of one thousand [thousand] seven hundred and eighty seven, and the law of Congress, entitled "An act to enable the people of the Indiana Territory to form a Constitution and State Government, and for the admission of such state into the union, on an equal footing with the original States" in order to establish Justice, promote the welfare, and secure the blessings of liberty to ourselves and our posterity; do ordain and establish the following consitution or form of Government, and do mutually agree with each other to form ourselves into a free and Independent state, by the name of the State of Indiana.<sup>2</sup>

## ARTICLE I.

Sect. 1st. That the general, great and essential principles of liberty and free Government may be recognized and unalterably established; WE declare, That all men are born equally free and independent, and have certain natural, inherent, and unalienable rights; among which are the enjoying and defending life and liberty, and of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety.

Sect. 2. That all power is inherent in the people; and all free Governments are founded on their authority, and instituted for their peace, safety and happiness. For the advancement of these ends, they have at all times an unalienable and indefeasible right to alter or reform their Government in such manner as they may think proper.

Sect. 3. That all men have a natural and indefeasible right to worship Almighty God, according to the dictates of their own con-

2. Reported by committee as follows:

Done in convention, begun and held at Corydon, on Monday the 10th day of June, A.D. 1816, and of the independence of the United States, the fortieth: We the people of the territory of Indiana, having the right of admission into the general government as a member of the Union, consistent with the constitution of the United States, the ordinance of congress of one thousand seven hundred and eighty-seven, and the law of congress entitled "an act to enable the people of the Indiana territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states, and for other purposes, in order to establish justice, promote the welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish the following constitution or form of government, and do mutually agree with each other to form ourselves into a free and independent state, by the name of the state of ———— (Conv. J., p. 24).

No subsequent amendments are recorded.

sciences: That no man shall be compelled to attend, erect, or support any place of Worship, or to maintain any ministry against his consent: That no human authority can, in any case whatever, control or interfere with the rights of conscience: And that no preference shall ever be given by law to any religious societies, or modes of worship; and no religious test shall be required as a qualification to any office of trust or profit.

Sect. 4. That elections shall be free and equal.<sup>3</sup>

Sect. 5. That in all civil cases, when the value in controversy shall exceed the sum of twenty dollars, and in all criminal cases, except in petit misdemeanors which shall be punished by fine only, not exceeding three dollars, in such manner as the Legislature may prescribe by law; the right of trial by Jury shall remain inviolate.<sup>4</sup>

3. Sections 1, 2, 3 and 4 were reported by the committee as follows and the amendments made thereto are not recorded in the Journal.

Section 1. That the general, great and essential principles of liberty and free government may be recognized and unalterably established, WE DECLARE, That all men are born equally free and independent, and have certain natural, inherent and unalienable rights, among which are, the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.

Sec. 2. That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness. For the advancement of these ends, they have at all times an unalienable and indefeasible right to alter or reform their government in such manner as they may think proper.

Sec. 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences: That no man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent: That no human authority ought in any case whatever to control or interfere with the rights of conscience; and that no preference shall ever be given by law to any religious societies or modes of worship, and no religious test shall be required as a qualification to any office of trust or profit.

Sec. 4. That elections shall be free and equal. (Conv. J., pp. 24-5).

4. Reported by committee as follows:

Sec. 5. That the right of trial by jury shall remain inviolate. (Conv. J., p. 25).

Amended prior to June 21, to read as follows:

Sec. 5. That in all civil cases, where the sum in controversy shall exceed the sum of twenty dollars the right of trial by jury shall remain inviolate.

Amended on June 21, by a vote of 27-13, to read as follows:

Sec. 5. That in all civil cases, where the value in controversy shall exceed the sum of twenty dollars, except in petty misdemeanors, which shall be punished by fine only, not exceeding five dollars, in such manner as the legislature may prescribe by law, reserving to the party charged, the right of appeal to the circuit court, the right of trial by jury shall remain inviolate. (Conv. J., p. 44).

On June 22, the vote by which this amendment was adopted was reconsidered. The words, "reserving to the party charged the right of appeal to the circuit court," were stricken out by a vote of 25-14. The section as thus amended was then adopted by a vote of 15-14. Later, the word "five" was stricken out and the word "three" inserted by a vote of 28-13. As thus amended, section 5 read as follows:

Sec. 5. That in all civil cases, where the value in controversy shall exceed the sum of twenty dollars, except in petty misdemeanors, which shall be punished by fine only, not exceeding three dollars, in such manner as the legislature may prescribe by law, the right of trial by jury shall remain inviolate.

An attempt to strike out the whole of the fifth section and insert, "The right of trial by jury shall remain inviolate," was lost by a vote of 29-12. (Conv. J., pp. 48-9).

No further amendments are recorded.



Sect. 6th. That no power of suspending the operation of the laws, shall be exercised, except by the Legislature, or its authority.

Sect. 7th. That no man's particular services shall be demanded, or property taken, or applied to public use, without the consent of his representatives or without a just compensation being made therefor.

Sect. 8. The rights of the people, to be secure in their persons, houses, papers, and effects, against unreasonable searches, and seizures, shall not be violated: and no warrant shall issue, but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Sect. 9th. That the printing presses shall be free to every person, who undertakes to examine the proceedings of the Legislature, or any branch of Government; and no law shall ever be made to restrain the right thereof. The free communication of thoughts, and opinions, is one of the invaluable rights of man; and every Citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty.

Sect. 10. In prosecutions for the publication of papers investigating the official conduct of officers, or men in a public capacity, or when the matter published is proper for the public information, the truth thereof may be given in evidence; and in all indictments for libels, the Jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases.

Sect. 11. That all Courts shall be open, and every person, for an injury done him, in his lands, goods, person, or reputation shall have remedy by the due course of law; and right and justice administered without denial or delay.

Sect. 12. That no person arrested, or confined in Jail, shall be treated with unnecessary rigour, or be put to answer any criminal charge, but by presentment Indictment, or impeachment.

Sect. 13. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel, to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, to have [to have] compulsory process for obtaining witnesses in his favour, and in prosecutions by indictment, or presentment, a speedy public trial by an

impartial Jury of the County or district in which the offence shall have been committed; and shall not be compelled to give evidence against himself, nor shall be twice put in jeopardy for the same offence.

Sect. 14. That all persons shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident, or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety may require it.

Sect. 15. Excessive bail shall not be required, excessive fines shall not be imposed, nor cruel and unusual punishments inflicted.

Sect. 16. All penalties shall be proportioned to the nature of the offence.

Sect. 17. The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison, after delivering up his estate, for the benefit of his creditor, or creditors, in such manner as shall be prescribed by law.

Sect. 18. No ex post facto law, nor any law impairing the validity of contracts, shall ever be made, and no conviction shall work corruption of blood, nor forfeiture of estate.

Sect. 19. That the people have a right to assemble together in a peaceable manner, to consult for their common good, to instruct their representatives, and to apply to the Legislature for redress of grievances.

Sect. 20. That the people have a right to bear arms for the defence of themselves, and the state; and that the military shall be kept in strict subordination to the civil power.

Sect. 21. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Sect. 22. That the Legislature shall not grant any title of nobility, or hereditary distinctions, nor create any office, the appointment to which, shall be [be] for a longer term than good behaviour.

Sect. 23. That emigration from the state shall not be prohibited.

Sect. 24. To guard against any encroachments on the rights herein retained, we declare, that every thing in this article, is

excepted out of the general powers of Government, and shall forever remain inviolable.<sup>5</sup>

5. Reported by committee as follows, no amendments being recorded:

Sec. 6. That no power of suspending the laws shall be exercised except by the legislature or its authority.

Sec. 7. That no man's particular services shall be demanded, or property taken or applied to public use, without the consent of his representatives, or without a just compensation being made therefor.

Sec. 8. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Sec. 9. That the printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any branch of government; and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may fully speak, write and print on any subject, being responsible for the abuse of that liberty.

Sec. 10. In prosecutions for the publication of papers investigating the official conduct of officers or men in a public capacity, or where the matter published is proper for the public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts under the direction of the court, as in other cases.

Sec. 11. That all courts shall be open, and every person, for an injury done him in his lands, goods, person or reputation, shall have remedy by the due course of law, and right and justice administered without denial or delay.

Sec. 12. That no person arrested, or confined in jail, shall be treated with unnecessary rigor, or be put to answer any criminal charge but by presentment, indictment or impeachment.

Sec. 13. That in all criminal prosecutions the accused hath a right to be heard by himself and counsel, to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor; and in prosecutions by indictment or presentment, a speedy public trial by an impartial jury of the county or district in which the offence shall have been committed, and shall not be compelled to give evidence against himself, nor shall be twice put in jeopardy for the same offence.

Sec. 14. That all persons shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended unless when in case of rebellion or invasion the public safety may require it.

Sec. 15. Excessive bail shall not be required; excessive fines shall not be imposed, nor cruel and unusual punishments inflicted.

Sec. 16. All penalties shall be proportioned to the nature of the offence.

Sec. 17. The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditor or creditors, in such manner as shall be prescribed by law.

Sec. 18. No ex post facto law, nor any law impairing the validity of contracts, shall ever be made, and no conviction shall work corruption of blood nor forfeiture of estate.

Sec. 19. That the people have a right to assemble together in a peaceable manner to consult for their common good, to instruct their representatives and to apply to the legislature for redress of grievances.

Sec. 20. That the people have a right to bear arms for the defence of themselves and the state, and that the military shall be kept in strict subordination to the civil power.

Sec. 21. That no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

Sec. 22. That the legislature shall not grant any title of nobility or hereditary distinction, nor create any office the appointment to which shall be for a longer term than good behaviour.

Sec. 23. That emigration from the State shall not be prohibited.

Sec. 24. To guard against any encroachments on the rights herein retained, we declare that every thing in this article is excepted out of the general powers of government, and shall forever remain inviolate. (Conv. J., pp. 25-26.)



## ARTICLE II.

The powers of the Government of Indiana shall be divided into three distinct departments, and each of them be confided to a separate body of Magistracy, to wit: those which are Legislative to one, those which are Executive to another, and those which are Judiciary to another: And no person or collection of persons, being of one of those departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.<sup>6</sup>

ARTICLE III.<sup>7</sup>

Sect. 1. The Legislative authority of this state, shall be vested in a general assembly, which shall consist of a Senate, and house of Representatives, both to be elected by the people.

Sect. 2. The General Assembly may, within two years after their first meeting, and shall, in the year eighteen hundred and twenty, and every subsequent term of five years, cause an enumeration to be made, of all the white male inhabitants above the age of twenty-one years. The number of Representatives shall, at the several periods of making such enumeration, be fixed by the General Assembly, and apportioned among the several counties, according to the number of white male inhabitants, above twenty-one years of age in each; and shall never be less than twenty-five, nor greater than thirty-six, until the number of white male inhabitants above twenty-one years of age, shall be twenty-two thousand; and after that event, at such ratio, that the whole number of Representatives shall never be less than thirty-six, nor exceed one hundred.

6. Reported by Committee on Distribution of Powers of Government on June 13, as follows:

Sec. 1st. That the powers of the State shall be divided into and forever remain and consist of three distinct and separate departments in manner following: Those relative or appertaining to the legislative, in one separate and distinct branch or magistracy. Those of the executive, in one separate and distinct branch or magistracy; and those of the judiciary in one distinct branch or magistracy—and,

Sec. 2d. That no person or persons duly elected and qualified to serve in one branch of the government, shall, during his continuance in office, be eligible to or have any concern in the duties of either of the other two branches of the government, except in the instances herein after expressly permitted or enjoined. (p. 14.)

June 14, considered in committee of the whole, amended and advanced to second reading. June 15, read second time and laid on the table. On June 25, the Committee of Revisions reported Article II back to the convention and it was ordered engrossed for third reading. On June 27, Article II was read a third time and passed. The amendments made to this Article are not recorded in the Journal, but were made by the committee of the whole and possibly the Committee of Revisions.

7. Reported by Committee on the Legislative Department of Government on June 13. Considered in committee of the whole on June 17 and 18, amended and ordered engrossed. Read a second time on June 20, amended and referred to the Committee of Revisions. Reported back to the Convention on June 25 by the Committee of Revisions. Considered by the Convention and amended on June 25 and 26. Read a third time and passed on June 27.

Sect. 3. The Representatives shall be chosen annually, by the qualified electors of each County respectively, on the first Monday of August.<sup>8</sup>

Sect. 4. No person shall be a Representative, unless he shall have attained the age of twenty-one years, and shall be a Citizen of the united States, and an inhabitant of this state, and shall also have resided within the limits of the County, in which he shall be chosen, one year next preceeding his election; if the County shall have been so long erected, but if not, then within the limits of the County or Counties out of which it shall have been taken; unless he shall have been absent on the public business of the united States, or of this state, and shall have paid a State or County tax.<sup>9</sup>

Sect. 5. The Senators shall be chosen for three years, on the first Monday in August, by the qualified voters for Representatives; and on their being convened, in consequence of the first election, they shall be divided by lot, from their respective Counties, or districts, as near as can be, into three classes; the seats of the senators of the first class shall be vacated at the expiration of

8. Sections 1, 2 and 3 were reported by the committee as follows, the amendments which were made thereto are not recorded in the Journal.

Sec. 1. The legislative authority of this State shall be vested in a general assembly, which shall consist of a senate and house of representatives, both to be elected by the people.

Sec. 2. Within ——— years after the first meeting of the general assembly, and within every subsequent term of ——— years, an enumeration of all the white male inhabitants above twenty-one years of age, shall be made in such manner as shall be directed by law. The number of representatives shall, at the several periods of making such enumeration, be fixed by the legislature and apportioned among the several counties according to the number of white male inhabitants above twenty-one years of age in each, and shall never be less than ——— nor greater than ——— until the number of white male inhabitants, above ——— twenty-one years of age shall be ——— thousand; after that event, at such ratio that the whole number of representatives shall never be less than ——— nor exceed ———

Sec. 3. The representatives shall be chosen annually by the citizens of each county respectively, on the first Monday of August. (Conv. J., pp. 15-16.)

9. Reported by committee as follows:

Sec. 4. No person shall be a representative who shall not have attained the age of thirty years, and be a citizen of the United States, and an inhabitant of this state; shall also have resided within the limits of the county in which he shall be chosen two years next preceding his election, unless he shall have been absent on the public business of the United States, or of this State, and shall have paid a State or county tax. (Conv. J., p. 16.)

Amended in committee of the whole, by consent, to read as follows:

Sec. 4. No person shall be a representative who shall not have attained the age of thirty years, and be a citizen of the United States, and an inhabitant of this State; shall also have resided within the limits of the county in which he shall be chosen two years next preceding his election, if the county shall have been so long erected; but if not, within the limits of the county or counties out of which it shall have been taken unless he shall have been absent on the public business of the United States, or of this State, and shall have paid a State or county tax. (Conv. J., p. 40.)

An attempt to strike out the expression, "and shall have paid a State or county tax," was lost by a vote of 19-23. (Conv. J., pp. 39-40.)

the first year; & the second class, at the expiration of the second year; and of the third class, at the expiration of the third year; so that one third thereof, as near as possible, may be annually chosen forever thereafter.<sup>10</sup>

Sect. 6. The number of senators shall, at the several periods of making the enumeration before mentioned, be fixed by the General Assembly, and apportioned among the several Counties or districts, to be established by law, according to the number of white male inhabitants of the age of twenty-one years in each, and shall never be less than one third, nor more than one half of the number of Representatives.<sup>11</sup>

Sect. 7. No person shall be a senator, unless he shall have attained the age of twenty-five years, and shall be a Citizen of the united States, and shall, next preceeding the election, have resided two years in the state, the last twelve months of which, in the County or district in which he may be elected; if the county or district shall have been so long erected, but if not, then within the limits of the County, or Counties, district or districts, out of which the same shall have been taken; unless he shall have been absent

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10. Reported by committee as follows:

Sec. 5. The senators shall be chosen biennially on the first Monday in August, by qualified voters for representatives; and on their being convened in consequence of the first election, they shall be divided by lot from their respective counties or districts, as near as can be, into two classes; the seat of the senators of the first class shall be vacated at the expiration of the first year, and of the second class at the expiration of the second year, so that one-half thereof, as near as possible, may be annually chosen forever thereafter. (Conv. J., p. 16.)

Amended in committee of the whole, by consent, to read as follows:

Sec. 5. The senators shall be chosen for three years on the first Monday in August, by qualified voters for representatives; and on their being convened in consequence of the first election, they shall be divided by lot from their respective counties or districts, as near as can be, into two classes; the seat of the senators of the first class shall be vacated at the expiration of the first year, and of the second class at the expiration of the second year, so that one-half thereof, as near as possible, may be annually chosen forever thereafter.

As originally reported, this section provided for the biennial election of State senators; according to the strict text of the Journal, the word "biennially" was stricken out and the word "triennially" inserted, although there is some evidence that this is a misprint; later, according to the Journal, the word "triennially" was stricken out and the expression "for three years" inserted. After the adoption of this amendment, an unsuccessful attempt, lost by a vote of 17-25, was made to provide for the biennial election of senators. (Conv. J., p. 40.)

11. Reported by committee as follows:

Sec. 6. The number of senators shall, at the several periods of making the enumeration before mentioned, be fixed by the legislature and apportioned among the several counties or districts to be established by law, according to the number of white male inhabitants of the age of twenty-one years in each, and shall never be less than ——— nor more than ——— of the number of representatives. (Conv. J., p. 16.)

The amendments to this section are not recorded.



on the public business of the united States, or of this state, and shall moreover, have paid a State or County tax.<sup>12</sup>

Sect. 8. The house of Representatives, when assembled, shall choose a Speaker, and its other officers, and the Senate shall choose its officers, except the president; and each shall be judges of the qualifications and elections of its members; and sit upon its own adjournments. Two thirds of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members.<sup>13</sup>

Sect. 9. Each house shall keep a Journal of its proceedings, and publish them: The yeas and nays of the members, on any question, shall, at the request of any two of them. be entered on the Journals.

Sect. 10. Any one member of either house, shall have liberty to dissent from, and protest against any act or resolution, which he may think injurious to the public, or any individual or individuals, and have the reason of his dissent entered on the Journals.

Sect. 11. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause; and shall have all other powers necessary for a branch of the Legislature of a free and independent State.

Sect. 12. When vacancies happen in either branch of the Gen-

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12. Reported by committee as follows:

Sec. 7. No person shall be a senator who has not arrived at the age of thirty years, and is a citizen of the United States, shall have resided two years in the county or district immediately preceding the election, unless he shall have been absent on the public business of the United States, or of this State, and shall moreover have paid a State or county tax. (Conv. J., p. 16.)

After the adoption of certain unrecorded amendments in committee of the whole, the following provision was adopted by consent: "— if the county or district shall have been so long erected; but if not, then within the limits of the county or counties, district or districts, out of which the same shall have been so taken." (Conv. J., p. 40.)

13. Reported by committee as follows:

Sec. 8. The house of representatives, when assembled, shall choose a speaker, and the senate, when assembled, shall choose a president, and shall each choose its other officers, be judges of the qualifications and elections of its members, and sit upon its own adjournments. — of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members. (Conv. J., p. 16.)

Amended in committee of the whole, by consent, to read as follows:

Sec. 8. The house of representatives, when assembled, shall choose a speaker, and the senate, when assembled, shall choose a president, unless in cases otherwise directed by this constitution, when it becomes necessary and shall each choose its other officers, be judges of the qualifications and elections of its members, and sit upon its own adjournments. — of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members. (Conv. J., p. 39.)

eral Assembly, the Governor, or the person exercising the power of Governor, shall issue writs of election to fill such vacancies.

Sect. 13. Senators and Representatives shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest, during the Session of the General Assembly, and in going to, or returning from the same; and for any Speech or debate in either house, they shall not be questioned in any other place.

Sect. 14. Each house may punish, by imprisonment, during their Session, any person, not a member, who shall be guilty of any disrespect to the house, by any disorderly, or contemptuous behaviour in their presence; provided such imprisonment shall not, at any one time, exceed twenty-four hours.

Sect. 15. The doors of each house, and of committees of the whole, shall be kept open, except in such cases as, in the opinion of the House, may require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days, nor to any other place than that in which the two houses shall be sitting.

Sect. 16. Bills may originate in either house, but may be altered, amended or rejected by the other.

Sect. 17. Every bill shall be read on three different days in each house, unless, in case of urgency, two-thirds of the house, when such bill may be depending, shall deem it expedient to dispense with this rule: And every bill having passed both houses, shall be signed by the president and speaker of their respective houses.

Sect. 18. The style of the laws of this State shall be, ‘‘Be it enacted by the General assembly of the State of Indiana.’’<sup>14</sup>

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14. Sections 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 were reported by the committee as follows, and the amendments which were made thereto are not recorded in the Journal.

Sec. 9. Each house shall keep a journal of its proceedings, and publish them. The yeas and nays of the members on any question, shall, at the desire of any one of them, be entered on the journals.

Sec. 10. Any one member of either house shall have liberty to dissent from, and protest against, any act or resolution which he may think injurious to the public or any individual or individuals, and have the reason of his dissent entered on the journals.

Sec. 11. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and with the concurrence of two-thirds, expel a member, but not a second time for the same cause; and shall have all other powers necessary for a branch of the legislature of a free and independent state.

Sec. 12. When vacancies happen in either house, the governor, or the person exercising the powers of governor, shall issue writs of election to fill such vacancies.

Sec. 13. Senators and representatives shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during the session of the general assembly, and in going to and returning from the same, and for any speech or debate in either house, they shall not be questioned in any other place.

Sec. 14. Each house may punish, by imprisonment, during their session, any person, not a member, who shall be guilty of disrespect to the house by any disorderly

Sect. 19. All bills for [for] raising revenue shall originate in the house of Representatives, but the senate may amend or reject, as in other bills.<sup>15</sup>

Sect. 20. No person, holding any office under the authority of the President of the United States, or of this State, Militia officers excepted, shall be eligible to a seat in either branch of the General Assembly; unless he resign his office, previous to his election; nor shall any member of either branch of the General Assembly, during the time for which he is elected, be eligible to any office, the appointment of which is vested in the General Assembly: Provided That nothing, in this constitution, shall be so construed, as to prevent any member of the first Session of the first General Assembly from accepting any office, that is created by this constitution, or the Constitution of the united States, and the salaries of which are established.<sup>16</sup>

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or contemptuous behaviour in their presence; provided such imprisonment shall not at any one time exceed ——— .

Sec. 15. The doors of each house, and of committees of the whole, shall be kept open, except in such cases as in the opinion of the house require secrecy. Neither house shall, without the consent of the other adjourn for more than two days, nor to any other place than that in which the two houses shall be sitting.

Sec. 16. Bills may originate in either house, but may be altered, amended or rejected by the other.

Sec. 17. Every bill shall be read on three different days in each house; unless in cases of urgency, two-thirds of the house when such bill is so depending, shall deem it expedient to dispense with this rule: And every bill having passed both houses, shall be signed by the president and speaker of their respective houses.

Sec. 18. The style of the laws of this State shall be— "Be it enacted by the general assembly of the ——— . (Conv. J., pp. 17-18.)

15. No section corresponding to Section 19 was reported by the committee and there is no record of the time or manner of its adoption.

16. The committee reported a section numbered 19, which is apparently the nucleus of Section 20, in the following form:

Sec. 19. No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office under this State, which shall have been created, or the emoluments of which shall have been increased, during such time. (Conv. J., p. 18.)

An amendment, the nature of which is not indicated, was proposed to original Section 19 in committee of the whole, and it was then moved that Section 19 and the proposed amendment be referred to a select committee. There is no evidence that the motion was adopted or acted upon. (Conv. J. p. 33.) On June 26, after Article III had been reported back from the Committee of Revisions, the following proviso was adopted by a vote of 22-19.

*Provided*, That nothing in this constitution shall be so construed as to prevent any member of the first session of the first general assembly accepting any office that is created by this constitution, or the constitution of the United States, and the salaries of which are established. (Conv. J., p. 58.)

The words "or territory", which occurred in the draft under consideration, were stricken out.

A proposed amendment to render justices of the peace eligible to seats in the General Assembly, the same as military officers, was rejected by a vote of 25-14.

An attempt to strike out the whole section as finally amended was lost by a vote of 28 to 9. (Conv. J., pp. 58-9.)



Sect. 21. No money shall be drawn from the Treasury but in consequence of appropriations made by law.

Sect. 22. An accurate Statement of the receipts and expenditures of the public money shall be attached to, and published with the laws, at every annual session of the General Assembly.

Sect. 23. The house of Representatives shall have the sole power of impeaching; but a majority of all the members elected must concur in such impeachment. All impeachments shall be tried by the senate, and when sitting for that purpose, the senators shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of a majority of all the senators elected.

Sect. 24. The Governor, and all civil officers of the State, shall be removed from office, on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors; but Judgment in such cases, shall not extend further than removal from office, and disqualification to hold any office of honour, profit, or trust, under this State. The party, whether convicted or acquitted shall, nevertheless, be liable to indictment trial, judgment, and punishment, according to law.<sup>17</sup>

Sect. 25. The first session of the General Assembly shall commence on the first Monday of November next, and forever after, the General Assembly shall meet on the first Monday in December, in every year, and at no other period, unless directed by law, or provided for by this Constitution.<sup>18</sup>

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17. Sections 21, 22, 23, and 24, were reported by the committee as follows and the amendments made thereto are not recorded:

Sec. 20. No money shall be drawn from the treasury but in consequence of appropriations made by law.

Sec. 21. An accurate statement of the receipts and expenditures of the public money shall be attached to, and published with, the laws of every session of the general assembly.

Sec. 22. The house of representatives shall have the sole power of impeaching; but a majority of all the members must concur in an impeachment. All impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of a majority of all the senators.

Sec. 23. The governor, and all civil officers of the state, shall be removed from office on impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors; but judgment in such cases shall not extend further than removal from office, and disqualification to hold any office of honor, profit or trust, under this State. The party, whether convicted, or acquitted, shall, nevertheless, be liable to indictment, trial, judgment, and punishment, according to law.

18. The committee reported Section 25, numbered 24, as follows:

Sec. 24. The first session of the general assembly shall commence on the ——— day of ——— next, and forever after, the general assembly shall meet on the first Monday in December in every year, and at no other period unless directed by law. (Conv. J., p. 18.)

On June 26, after Article III had been reported back from the Committee on Revisions, the blank was filled, by consent, with the words, "first Monday of November next." (Conv. J., p. 60.) Suggestions to insert "November 1817" and "November next" were not acted upon. (Conv. J., p. 55.)

Sect. 26. No person, who hereafter may be a collector, or holder of public money, shall have a seat in either house of the General Assembly, until such person shall have accounted for, and paid into the Treasury all sums for which he may be accountable.<sup>19</sup>

#### ARTICLE IV.<sup>20</sup>

Sect. 1st. The Supreme Executive power of this State shall be vested in a Governor, who shall be styled, the Governor of the State of Indiana.

Sect. 2. The Governor shall be chosen by the qualified electors, on the first monday in August, at the places where they shall respectively vote for Representatives. The returns of every election for Governor shall be sealed up and transmitted to the seat of Government, directed to the speaker of the house of Representatives, who shall open and publish them in the presence of both houses of the General assembly. The person having the highest number of votes shall be governor, but if two or more shall be equal, and highest in votes, one of them shall be chosen Governor by the joint vote of the members of both houses. Contested elections shall be determined by a committee, to be selected from both

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19. The committee reported Section 26, numbered 27, as follows:

Sec. 27. No person who heretofore hath been, or hereafter may be, a collector or holder of public money, shall have a seat in either house of the general assembly, until such person shall have accounted for and paid into the treasury all sums for which he may be accountable or liable. (Conv. J., p. 19.)

On June 26, after Article III had been reported back from the Committee on Revisions, the words, "heretofore hath been," were stricken out by consent. The effect of this amendment was to render persons who had been fiduciary agents prior to the adoption of the Constitution eligible to seats in the General Assembly. (Conv. J., p. 60.)

The Committee on the Legislative Department reported three additional sections as follows:

Sec. 25. The following persons or officers shall not be eligible as a candidate for or have a seat in the general assembly, to wit:

Sec. 26. No person shall be appointed to any office within any county who shall not have been a citizen and an inhabitant thereof two years next before his appointment, if the county shall have been so long erected; but if the county shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken.

Sec. 28. The legislature of this State shall not allow the following officers of government a greater annual salary than as follows: (Conv. J., pp. 18-19.)

The disposition of Section 25 is not recorded.

Sections 26 and 28 were ordered, by consent, to be transferred to the Article relative to general provisions (Article XI, Conv. J., p. 60). They appear as Section 14 and Section 16, respectively, of Article XI.

20. Reported by Committee on Executive Department on June 15. Considered by committee of the whole and amended on June 19. Read second time on June 21, amended and referred to Committee on Revisions. Reported back by Committee on Revisions on June 25, amended and advanced to third reading. Read a third time and passed on June 27.

houses of the General assembly and formed and regulated in such manner as shall be directed by law.

Sect. 3. The Governor shall hold his office during three years, from and after the third day of the first session of the General assembly, next ensuing his election, and until a successor shall be chosen and qualified, and shall not be capable of holding it longer than six years in any term of nine years.

Sect. 4. He shall be at least thirty years of age, and shall have been a citizen of the united States ten years, and have resided in the State five years next preceeding his Election; unless he shall have been absent on the business of the State, or of the United States; provided that this shall not disqualify any person from the office of Governor, who shall be a citizen of the United States, and Shall have resided in the Indiana Territory two years next preceeding the adoption of this Constitution.

Sect. 5. No member of Congress, or person holding any office under the united States, or this State, shall exercise the office of Governor, or Lieutenant Governor.

Sect. 6. The Governor shall, at Stated times, receive for his services a compensation, whrch shall neither be increased nor diminished during the term for which he shall have been elected.

Sect. 7. He shall be commander in chief of the army and Navy of this State and of the Militia thereof, except when they shall be called into the service of the United States, but he shall not command personally in the field unless he shall be advised so to do by a resolution of the General assembly.<sup>21</sup>

21. Sections 1, 2, 3, 4, 5, 6 and 7 were reported by the committee as follows and the amendments made thereto are not recorded in the Journal.

See. 1st. The supreme executive power of this State shall be vested in a governor, who shall be styled the governor of the State of Indiana.

See. 2d. The governor shall be chosen on the ——— at the places where they shall respectively vote for representatives. The returns of every election for governor shall be sealed up and transmitted to the seat of government, directed to the speaker of the senate, who shall open and publish them in the presence of both houses of the legislature. The person having the highest number of votes shall be governor: But if two or more shall be equal and highest in votes, one of them shall be chosen governor by the joint vote of the members of both houses. Contested elections shall be determined by a committee to be selected from both houses of the legislature, and formed and regulated in such manner as shall be directed by law.

See. 3rd. The governor shall hold his office during three years from the ——— next ensuing his election, and shall not be capable of holding it longer than six years in any term of nine years.

See. 4th. He shall be at least thirty years of age, and have been a citizen of the United States ten years, and have resided in this State five years next preceeding his election, unless he shall have been absent on the business of this State, or of the United States: *Provided*, That this shall not disqualify any person from the office of governor



Sect. 8. He shall nominate, and, by and with the advice and consent of the senate, appoint and commission all officers, the appointment of which is not otherwise directed by this Constitution, and all offices which may be created by the General Assembly, shall be filled in such manner as may be directed by law.<sup>22</sup>

Sect. 9. Vacancies that may happen in offices, the appointment of which is vested in [in] the Governor, and senate, or in the General Assembly, shall be filled by the Governor, during the recess of the General Assembly, by granting Commissions that shall expire at the end of the next Session.

Sect. 10. He shall have power to remit fines and forfeitures, grant reprieves and pardons, except in cases of impeachments.

Sect. 11. He may require information in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices.

Sect. 12. He shall, from time to time, give to the General Assembly information of the affairs of the State, and recommend to their consideration, such measures as he shall deem expedient.

Sect. 13. He may, in extraordinary occasions, convene the General Assembly at the seat of Government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy, or from contagious disorders, and in case of a disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not beyond the time of their next annual Session.

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who shall have resided in this State two years preceding the adoption of the constitution.

Sec. 5th. No member of congress, or person holding any office under the United States, shall be eligible to the office of governor.

Sec. 6th. The governor shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the term for which he shall have been elected.

Sec. 7th. He shall be commander in chief of the army and navy of this State, and of the militia thereof, except when they shall be called into the service of the United States; but he shall not command personally in the field unless he shall be advised so to do by a resolution of the general assembly. (Conv. J., pp. 27-8.)

22. Reported by committee as follows:

Sec. 8th. He shall nominate, and by and with the advice and consent of the senate, appoint all officers whose offices are established by this constitution, or shall be established by law, and whose appointments are not herein, or shall by law be otherwise provided for: *Provided*, That no person shall be appointed to any office, within any county, who shall not have been a citizen and inhabitant therein one year next before his appointment, if the county shall have been so long erected, but if it shall not have been so long erected, then within the limits of the county or counties from which it shall have been taken. (Conv. J., p. 28.)

The amendments made to Section 8 are not recorded. The proviso of this section as originally reported is substantially identical with Section 26, reported by the Committee on the Legislative Department on June 13, which was transferred to the Article on general provisions, and appears in the constitution as Section 14 of Article XI.

Sect. 14. He shall take care that the laws be faithfully executed.

Sect. 15. A Lieutenant Governor shall be chosen at every election for a Governor, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for Governor, and Lieutenant Governor, the electors shall distinguish whom they vote for as Governor, and whom, as Lieutenant Governor.

Sect. 16. He shall, by virtue of his office, be President of the Senate, have a right, when in Committee of the whole, to debate and vote on all subjects, and when the senate are equally divided, to give the casting vote.

Sect. 17. In case of impeachment of the Governor, his removal from office, death, refusal to qualify, resignation, or absence from the State, the Lieutenant Governor shall exercise all the powers and authority appertaining to the office of Governor, until another be duly qualified, or the Governor absent, or impeached, shall return, or be acquitted.<sup>23</sup>

Sect. 18. Whenever the Government shall be administered by the Lieutenant Governor, or he shall be unable to attend as

23. Sections 9, 10, 11, 12, 13, 14, 15, 16 and 17 were reported by the committee as follows, and the amendments made thereto are not recorded in the Journal.

Sec. 9th. The governor shall have power to fill all vacancies that may happen during the recess of the legislature, by granting commissions, which shall expire at the end of the next session.

Sec. 10th. He shall have power to remit fines and forfeitures, grant reprieves and pardons, except in cases of impeachments.

Sec. 11th. He may require information in writing from the officer in the executive department, upon any subject relating to the duties of their respective offices.

Sec. 12th. He shall from time to time give to the general assembly, information of the affairs of the State, and recommend to their consideration such measures as he shall deem expedient.

Sec. 13th. He may on extraordinary occasions convene the general assembly at the seat of government, or at a different place, if that should have become, since their last adjournment, dangerous from an enemy, or from contagious disorders; and in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper—not beyond the time of their next annual session.

Sec. 14th. He shall take care that the laws be faithfully executed.

Sec. 15th. A lieutenant-governor shall be chosen at every election for a governor, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for governor and lieutenant-governor, the electors shall distinguish whom they vote for as governor, and whom as lieutenant-governor.

Sec. 16th. He shall, by virtue of his office, be speaker of the senate, have a right, when in committee of the whole, to debate and vote on all subjects, and when the senate are equally divided, to give the casting vote.

Sec. 17th. In case of the impeachment of the governor, his removal from office, death, refusal to qualify, resignation, or absence from the State, the lieutenant-governor shall exercise all the power and authority appertaining to the office of governor, until another be duly qualified or the governor absent or impeached, shall return or be acquitted. (Conv. J., pp. 28-9.)

President of the senate, the senate shall elect one of their own members as president for that occasion. And if during the vacancy of the office of Governor, the Lieutenant Governor shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the State, the President of the senate pro tem, shall in like manner administer the Government, until he shall be superseded by a Governor or Lieutenant Governor. The Lieutenant Governor, while he acts as president of the senate, shall receive, for his services the same Compensation which shall, for the same period, be allowed to the Speaker of the house of Representatives and no more: and during the time he administers the Government as Governor, shall receive the same compensation which the governor would have received, and been entitled to, had he been employed in the duties of his office, and no more.<sup>24</sup>

Sect. 19. The President *pro tempore* of the senate, during the time he administers the Government, shall receive in like manner, the same compensation, which the Governor would have received, had he been employed in the duties of his office, and no more.

Sect. 20. If the Lieutenant Governor shall be called upon to administer the Government, and shall, while in such administration, resign, die, or be absent from the State, during the recess of the General Assembly, it shall be the duty of the Secretary of State, for the time being, to convene the Senate for the purpose of choosing a president *pro tempore*.<sup>25</sup>

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24. Reported by committee as follows:

Sec. 18th. Whenever the government shall be administered by the lieutenant-governor, or he shall be unable to attend as speaker of the senate, the senate shall elect one of their own members as speaker for that occasion; and if during the vacancy of the office of governor, the lieutenant-governor shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the State, the speaker of the senate shall, in like manner, administer the government.

Sec. 19th. The lieutenant-governor, while he acts as speaker to the senate, shall receive for his services the same compensation which shall for the same period be allowed to the speaker of the house of representatives, and no more; and during the time he administers the government as governor, shall receive the same compensation which the governor would have received, and been entitled to, had he been employed in the duties of his office. (Conv. J., p. 29.)

The amendments to these original Sections, 18 and 19 are not recorded except that they were consolidated to constitute Section 18 of the constitution.

25. Sections 19 and 20 were reported by the committee as follows and no amendments thereto are recorded.

Sec. 20th. The speaker *pro-tempore* of the senate, during the time he administers the government, shall receive, in like manner, the same compensation which the governor would have received, had he been employed in the duties of his office.

Sec. 21st. If the lieutenant-governor shall be called upon to administer the government, and shall, while in such administration, resign, die, or be absent from the State, during the recess of the general assembly, it shall be the duty of the secretary, for the time being, to convene the senate for the purpose of choosing a speaker. (Conv. J., p. 29.)



Sect. 21. A secretary of state shall be chosen by the joint ballot of both houses of the General Assembly, and be commissioned by the Governor for four years, or until a new secretary be chosen and qualified. He shall keep a fair register, and attest all the official acts and proceedings of the Governor, and shall, when required, lay the same and all papers, minutes and vouchers, relative thereto, before either house of the General assembly, and shall perform such other duties as may be enjoined him by law.<sup>26</sup>

Sect. 22. Every bill, which shall have passed both houses of the General assembly, shall be presented to the Governor: if he approve, he shall sign it; but if not, he shall return it with his objections, to the house in which it have originated, who shall enter the objections at large upon their Journals and proceed to reconsider it; if after such reconsideration, a majority of all the members elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by a majority of all the members elected to that house, it shall be a law; but, in such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for, and against the bill, shall be entered on the Journals of each house respectively. If any bill shall not be returned by the Governor within five days (Sundays excepted) after it shall have been presented to him, it shall be a law, in like manner as if he had signed it: unless the General

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26. Reported by committee as follows:

Sec. 22nd. A secretary shall be chosen by joint ballot of both houses of the legislature, and commissioned by the governor for four years, or until a new secretary be chosen and qualified, if he shall so long behave himself well. He shall keep a fair register, and attest all the official acts and proceedings of the governor, and shall, when required, lay the same, and all papers, minutes, and vouchers, relative thereto, before either house of the legislature, and shall perform such other duties as may be enjoined him by law. (Conv. J., p. 29.)

Prior to June 21, this section had been amended to read substantially as follows:

Sec. 21st. A secretary shall be appointed by the governor, by and with the advice and consent of the senate, and commissioned by the governor for four years, or until a new secretary be chosen and qualified, if he shall so long behave himself well. He shall keep a fair register, and attest all the official acts and proceedings of the governor, and shall, when required, lay the same, and all papers, minutes, and vouchers, relative thereto, before either house of the legislature, and shall perform such other duties as may be enjoined him by law. (Conv. J., p. 42.)

On June 21, this section, by a vote of 24-16, was amended to read as follows:

Sec. 21st. A secretary of state shall be chosen by the joint ballot of both houses of the legislature and commissioned by the governor for four years, or until a new secretary be chosen and qualified, if he shall so long behave himself well. He shall keep a fair register, and attest all the official acts and proceedings of the governor, and shall, when required, lay the same, and all papers, minutes, and vouchers, relative thereto, before either house of the legislature, and shall perform such other duties as may be enjoined him by law. (Conv. J., p. 42.)

adjournment prevents its return, in which case it shall be a law, unless sent back within three days after their next meeting.<sup>27</sup>

Sect. 23. Every resolution, to which the concurrence of both houses may be necessary, shall be presented to the Governor, and before it shall take effect, be approved by him, or being disapproved, shall be repassed by a majority of all the members elected to both houses, according to the rules and limitations prescribed in case of a bill.<sup>28</sup>

Sect. 24. There shall be elected, by joint ballot of both houses of the General Assembly, a Treasurer, and Auditor, whose powers and duties shall be prescribed by law, and who shall hold their offices three years, and until their successors be appointed and qualified.

Sect. 25. There shall be elected in each County, by the qualified electors thereof, one Sheriff, and one Coroner, at the times and places of holding elections for members of the General assembly. They shall continue in office two years, and until successors shall be chosen and duly qualified: provided, that no person shall be eligible to the office of sheriff more than four years in any term of six years.<sup>29</sup>

Sect. 26. There shall be a seal of this State, which shall be

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27. Reported by committee as follows, no amendments being recorded:

Sec. 23d. Every bill which shall have passed both houses of the general assembly, shall be presented to the governor; if he approve, he shall sign it; but if not, he shall return it, with his objections, to the house in which it shall have originated, who shall enter the objections at large upon their journal, and proceed to reconsider it. If after such reconsideration, a majority of all the members elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by a majority of all the members elected to that house, it shall be a law: But in such cases, the votes of both houses, shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law, in like manner, as if he had signed, unless the general adjournment prevent its return; in which case it shall be a law, unless sent back within three days after their next meeting. (Conv. J., p. 30.)

28. Reported by committee as follows:

Sec. 24th. Every order, resolution, or vote, to which the concurrence of both houses may be necessary, except on a question of adjournment, shall be presented to the governor, and before it shall take effect, be approved by him; or being disapproved shall be repassed by a majority of all the members elected to both houses, according to the rules and limitations prescribed in case of a bill. (Conv. J., p. 30.)

Amended, by consent, to read as follows:

Sec. 24th. Every resolution to which the concurrence of both houses may be necessary, shall be presented to the governor, and before it shall take effect, be approved by him; or being disapproved, shall be repassed by a majority of all the members elected to both houses, according to the rules and limitations prescribed in case of a bill. (Conv. J., p. 42.)

29. There is no record of the origin or consideration of Sections 24 and 25.

kept by the Governor and used by him officially, and shall be called, the seal of the State of Indiana.<sup>30</sup>

## ARTICLE V.<sup>31</sup>

Sect. 1st. The Judiciary power of this State, both as to mat-

30. Proposed as an additional section after the article had been referred back to the Convention from the Committee on Revisions and adopted by consent, as follows:

There shall be a seal of this State, which shall be kept by the governor, and used by him officially, and shall be called, *the seal of the State of Indiana*. (Conv. J., p. 55.)

31. Reported by Committee on Judiciary on June 17. Considered in committee of the whole on June 20. On June 21, the committee of the whole was discharged from the further consideration of the subject and the matter was referred to a select committee of six members. As reported by the Committee on Judiciary, this Article was as follows:

Sec. 1st. The judiciary power of this State, both as to matters of law and equity, shall be vested in one Supreme court, in circuit courts, and in such other inferior courts as the legislature may from time to time direct.

Sec. 2d. The Supreme court shall consist of three judges, and shall have appellate jurisdiction only; which shall be co-extensive with the State, under such restrictions and regulations, not repugnant to this constitution, as may from time to time be prescribed by law.

Sec. 3d. The circuit courts shall each consist of a president and associate judges. The State shall be divided, by law, into three circuits, for each of which a president shall be appointed, who, during his continuance in office, shall reside therein. The president and associate judges in their respective counties, any two of whom shall form a quorum, shall constitute the circuit court; and shall have a common law and chancery jurisdiction, and also complete criminal jurisdiction, in all such cases, and in such manner as shall be directed by law: *Provided*, That nothing herein contained shall prevent the legislature from increasing the number of circuits and presidents, as the exigencies of the state may require.

Sec. 4th. The judges of the Supreme, the circuit, and other inferior courts, shall hold their offices during good behaviour, and shall at all times receive for their services a compensation which shall not be diminished during their continuance in office.

Sec. 5th. The judges of the Supreme court shall, by virtue of their offices, be conservators of the peace throughout the State; as also the presidents of the circuit courts, in their respective circuits, and the associate judges, in their respective counties.

Sec. 6th. The Supreme court shall hold its sessions at the seat of government, at such times as shall be prescribed by law.

Sec. 7th. The judges of the Supreme court, and the presidents of the several circuit courts, shall be appointed by the governor, by and with the advice and consent of the senate; and the associate judges, by the qualified electors in their respective counties.

Sec. 8th. The Supreme court shall appoint its own clerk; and the clerks of the circuit courts, in the several counties, shall be elected by the qualified electors in each county respectively. But no person shall be eligible to the office of clerk of the circuit court, in any county, unless he shall first have obtained from one or more of the judges of the Supreme court, or from one or more of the presidents of the circuit courts, a certificate that he is well qualified to execute the duties of the office of clerk of the circuit court: *Provided*, That nothing herein contained shall prevent the circuit court, in any county, from appointing a clerk pro tem. until a qualified clerk may be duly elected. All clerks shall be removable by their respective courts for breach of good behaviour, or for incapacity to discharge the duties of the office, subject to an appeal from the circuit to the Supreme court, as in other cases; and in all cases of complaint for the purpose of removing a clerk, the court shall be judge of the facts as well as the law.

Sec. 9th. The style of all process shall be, "The State of Indiana." All prosecutions shall be carried on in the name and by the authority of the State of Indiana; and all indictments shall conclude "against the peace and dignity of the same." (Conv. J., p. 31.)

The redraft of the Article was reported by the select committee on June 22, amended and ordered engrossed for second reading. On June 24, considered on second reading and submitted to the Committee on Revisions. On June 25, the Article was reported back to the Convention, considered and ordered engrossed for third reading. On June 27, the Article was read a third time and passed.



ters of law and equity, shall be vested in one Supreme Court, in Circuit Courts, and in such other inferior Courts, as the General Assembly may from time to time, direct and establish.<sup>32</sup>

Sect. 2nd. The Supreme Court shall consist of three Judges, any two of whom shall form a quorum, and shall have appellate Jurisdiction only which shall be co-extensive with the limits of the State, under such restrictions, and regulations, not repugnant to this constitution, as may from time to time be prescribed by law. Provided nothing in this article shall be so construed, as to prevent the General Assembly from giving the Supreme Court original Jurisdiction in Capital cases, and cases in chancery, where the President of the Circuit Court, may be interested or prejudiced.<sup>33</sup>

Sect. 3rd. The Circuit Courts shall each consist of a President, and two associate Judges. The State shall be divided by law into three circuits, for each of which, a president shall be appointed, who during his continuance in office, shall reside therein. The President and associate Judges, in their respective Counties, shall have Common law and chancery Jurisdiction, as also complete criminal Jurisdiction, in all such cases and in such manner, as may be prescribed by law. The President alone, in the absence of the associate Judges, or the President and one of the associate Judges, in the absence of the other shall be competent to hold a Court, as also the two associate Judges, in the absence of the President, shall be competent to hold a Court, except in capital cases, and cases in chancery, provided, that nothing herein contained, shall prevent the General Assembly from increasing the number of circuits, and Presidents, as the exigencies of the State may from time to time require.<sup>34</sup>

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32. Section 1 was reported by the committee as follows, no subsequent amendments thereto being recorded.

Section 1. The judiciary power of this State, both as to matters of law and equity, shall be vested in one Supreme court, in circuit courts, and in such other inferior courts, as the legislature may from time to time direct and establish. (Conv. J., p. 45.)

On June 25, after the Committee on Revisions had reported, an attempt was made to amend this section by striking out the words "three judges" and inserting "one or more judges, as the general assembly shall from time to time prescribe by law." Rejected by a vote of 16-25. (Conv. J., p. 56.)

33. Reported by committee as follows:

Sec. 2. The Supreme court shall consist of three judges, any two of whom shall form a quorum, and shall have appellate jurisdiction only, which shall be co-extensive with the limits of the State, under such restrictions and regulations, not repugnant to this constitution, as may from time to time be prescribed by law. (Conv. J., p. 45.)

34. Reported by committee as follows:

Sec. 3. The circuit courts shall each consist of a president, and two associate judges. The State shall be divided by law into three circuits, for each of which a president shall be appointed, who, during his continuance in office, shall reside therein, the president and associate judges in their respective circuits, shall have common law and

Sect. 4. The Judges of the supreme Court, the Circuit, and other inferior Courts, shall hold their offices during the term of seven years, if they shall so long behave well, and shall at stated times receive for their services, a compensation which shall not be diminished, during their continuance in office.

Sect. 5. The Judges of the Supreme Court shall by virtue of their offices, be conservators of the peace throughout the State, as also the Presidents of the Circuit Courts, in their respective Circuits, and the associate Judges in their respective Counties.<sup>35</sup>

Sect. 6. The Supreme Court shall hold its sessions at the seat of Government, at such times as shall be prescribed by law: And the circuit Courts shall be held in the respective Counties as may be directed by law.<sup>36</sup>

chancery jurisdiction, as also complete criminal jurisdiction in all such cases, and in such manner, as may be prescribed by law. The president alone, in the absence of the associate judges, shall be competent to hold a court, as also the two associate judges, in the absence of the president, shall be competent to hold a court, except in capital cases, and cases in chancery: *Provided*, That nothing herein contained shall prevent the legislature from increasing the number of circuits and presidents, as the exigencies of the State may from time to time require. (Conv. J., p. 46.)

Amended on first reading, by consent, to read as follows:

Sec. 3. The circuit courts shall each consist of a president, and two associate judges. The State shall be divided by law into three circuits, for each of which a president shall be appointed, who, during his continuance in office, shall reside therein, the president and associate judges in their respective circuits, shall have common law and chancery jurisdiction as also complete criminal jurisdiction in all such cases, and in such manner, as may be prescribed by law. The president alone, in the absence of the associate judges, or the president, and one of the associate judges in the absence of the other, shall be competent to hold a court, as also the two associate judges, in the absence of the president, shall be competent to hold a court, except in capital cases, and cases in chancery: *Provided*, That nothing herein contained shall prevent the legislature from increasing the number of circuits and presidents, as the exigencies of the State may from time to time require. (Conv. J., p. 47.)

An unsuccessful attempt was made, rejected by a vote of 10-32, to amend Section 3 by striking out the words, "the State shall be divided by law into three circuits," and inserting in lieu thereof the provision that "the general assembly shall, from time to time, divide the State into circuits, as exigencies may require." (Conv. J., pp. 47-54.)

35. Sections 4 and 5 were reported by the committee as follows, no subsequent amendments thereto being recorded:

Sec. 4. The judges of the Supreme court, the circuit, and other inferior courts, shall hold their offices during the term of seven years, if they shall so long behave well, and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office.

Sec. 5. The judges of the Supreme court shall, by virtue of their offices, be conservators of the peace throughout the State; as also the presidents of the circuit courts, in their respective circuits, and the associate judges, in their respective counties. (Conv. J., p. 46.)

36. Reported by committee as follows and not subsequently amended:

Sec. 6. The Supreme court shall hold its sessions at the seat of government, at such times as shall be prescribed by law; and the circuit courts shall be held in their respective counties, as may be directed by law. (Conv. J., p. 46.)

An attempt, lost by a vote of 34-8, was made to amend Section 6 to read as follows:

Section 6. The Supreme court shall hold its sessions at such times and places as shall be prescribed by law; and the circuit courts shall be held in the respective counties, as may be directed by law. (Conv. J., p. 54.)

Sect. 7. The Judges of the supreme Court shall be appointed by the Governor, by and with the advice, and consent of the senate. The Presidents of the circuit Courts shall be appointed by Joint Ballot of both branches of the General Assembly, and the associate Judges of the Circuit Courts, shall be elected by the [by the] qualified electors in the respective Counties.

Sect. 8. The supreme Court shall appoint its own Clerk, and the clerks of the circuit Court, in the several Counties, shall be elected by the qualified electors, in the several Counties, but no person shall be eligible to the office of clerk of the Circuit Court in any County, unless he shall first have obtained, from one or more of the Judges of the Supreme Court, or from one or more of the Presidents of the Circuit Courts, a certificate that he is qualified to execute the duties of the office of Clerk of the circuit Court; provided that nothing herein Contained shall prevent the circuit Courts in each County, from appointing a clerk pro tem, until a qualified Clerk may be duly elected, and provided also, that the said clerks respectively when qualified, and elected, shall hold their offices seven years, and no longer, unless re-appointed.

Sect. 9. All clerks shall be removable by impeachment as in other cases.

Sect. 10. When any vacancies happen in any of the Courts occasioned by the death, resignation, or removal from office of any Judge of the supreme, or Circuit Courts, or any of the clerks of the said Courts, a successor shall be appointed in the same manner, as herein before prescribed, who shall hold his office for the period which his predecessor had to serve, and no longer unless re-appointed.

Sect. 11. The style of all process shall be "The State of Indiana." All prosecutions shall be carried on in the name and by the authority of the State of Indiana; and all indictments shall conclude, against the peace and dignity of the same.<sup>37</sup>

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37. Sections 7, 8, 9, 10 and 11 were reported by the committee as follows, no subsequent amendments thereto being recorded:

Sec. 7. The judges of the Supreme court shall be appointed by the governor, by and with the advice and consent of the senate. The presidents of the circuit courts shall be appointed by joint ballot of both branches of the legislature; and the associate judges of the circuit courts shall be elected by the qualified electors in their respective counties.

Sec. 8. The Supreme court shall appoint its own clerk; and the clerks of the circuit courts, in the several counties, shall be elected by the qualified electors in the several counties; but no person shall be eligible to the office of clerk of the circuit court, in any county, unless he shall first have obtained from one or more of the judges of the Supreme court, or from one or more of the presidents of the circuit courts, a certificate, that he is qualified to execute the duties of the office of clerk of the circuit court: *Provided*, That nothing herein contained shall prevent the circuit court, in each county,



Sect. 12. A competent number of Justices of the peace shall be elected by the qualified electors in each Township, in the several Counties, and shall continue in office five years, if they shall so long behave well, whose powers, and duties shall, from time to time, be regulated and defined by law.<sup>38</sup>

## ARTICLE VI.<sup>39</sup>

Sect. 1st. In all elections, not otherwise provided for by this constitution, every white male Citizen of the united States, of the age of twenty-one years and upwards, who has resided in the State, one year immediately preceeding such election, shall be entitled to vote in the County where he resides; except such as shall be enlisted in the army of the united States or their allies.<sup>40</sup>

from appointing a clerk pro tem until a qualified clerk may be duly elected: *And provided also*, That the said clerks respectively, when qualified and elected, shall hold their offices seven years, and no longer, unless re-appointed.

Sec. 9. All clerks shall be removable by impeachment, as in other cases.

Sec. 10. When any vacancies happen in any of the courts, occasioned by the death, resignation, or removal from office, of any judge of the Supreme or circuit courts, or any of the clerks of the said courts, a successor shall be appointed in the same manner as hereinbefore prescribed, who shall hold his office for the period which his predecessor had to serve, and no longer, unless re-appointed.

Sec. 11. The style of all process shall be, "The State of Indiana." All prosecutions shall be carried on in the name and by the authority of the State of Indiana; and all indictments shall conclude, against the peace and dignity of the same. (Conv. J., p. 47.)

38. Section 12, was proposed on first reading, as follows, and adopted by consent:

Sec. 12th. A competent number of justices of the peace shall be elected by the qualified electors in each township, in the several counties, and shall continue in office five years, if they shall so long behave well—whose powers and duties shall from time to time be regulated and defined by law. (Conv. J., p. 47.)

An attempt to amend this section by fixing the term of office of justices of the peace at three years instead of five was lost by a vote of 18-24. An attempt to fix the offices of justices of the peace "in each town corporate or county seat" was lost by a vote of 17-22. (Conv. J., p. 47.)

A section to be number 13, was proposed and rejected by a vote of 8-33. It was as follows:

*Provided, however*, That the operation of the Supreme court, provided for in this article, shall be suspended until the year eighteen hundred and twenty; and until that time it shall be the duty of the presiding judges of the circuit courts, to hold a court of errors and appeals at the seat of government, and at such other places as the legislature may from time to time prescribe, under such rules and regulations as the said article provides for the holding the Supreme court aforesaid. (Conv. J., p. 54.)

39. Article VI, was reported by the Committee on Elective Franchise and Elections on June 13, considered and amended on June 14, reported by Committee of Revisions on June 25, and passed on June 27.

40. Section 1, was reported as follows:

Sec. 1st. In all elections every white male person of the age of twenty-one years and upwards, who has resided in the State the last six months previous to such election shall be entitled to vote in the county or district where he resides. (Conv. J., p. 15.)

Amended in committee of the whole on June 14 to read as follows:

Sec. 1st. In all elections not otherwise provided for by this constitution every white male citizen of the United States of the age of twenty-one years and upwards, who has resided in the State one year immediately preceding such election, shall be entitled to vote in the county or district where he resides, except such as shall be enlisted in the army of the United States or their allies. (Conv. J., p. 22.)

Sect. 2. All elections shall be by ballot; provided that the General Assembly may, if they deem it more expedient at their Session in eighteen hundred and twenty-one, change the mode so as to vote *viva voce*, after which time it shall remain unalterable.<sup>41</sup>

Sect. 3. Electors shall in all cases, except treason felony, or breach of the peace, be free from arrest, in going to, during their attendance at, and in returning home from elections.<sup>42</sup>

Sect. 4. The General Assembly shall have full power to exclude from electing, or being elected, any person convicted of any infamous crime.<sup>43</sup>

Sect. 5. Nothing in this article shall be so construed as to prevent citizens of the united States, who were actual residents at the time of adopting this constitution, and who, by the existing laws of this Territory are entitled to vote or persons who have been absent from home on a visit, or necessary business, from the privilege of electors.<sup>44</sup>

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41. Section 2 was reported as follows:

Sec. 2nd. All votes shall be given *viva voce*.

Amended in committee of the whole on June 14 to read as follows:

Sec. 2nd. All votes shall be given by ballot for four years and afterwards be regulated by the legislature; and when thereafter established it shall remain unalterable, unless altered by a future convention of the people. Provided, if the legislature, at their first session after the expiration of the said four years, shall neglect or refuse to make any alteration in the mode of voting, they shall thereafter forever be precluded from legislating on the subject.

The proviso "for four years and afterwards be regulated by the legislature; and when thereafter established, it shall remain unalterable, unless altered by a future convention of the people," was adopted by a vote of 22-21. The changes in the first sentence, "All votes shall be given by ballot," and the proviso at the end of the section were taken by consent. An attempt, lost by a vote of 17-26, was made to strike out the whole section. (Conv. J., pp. 22-3.)

42. Reported by committee as follows:

Sec. 3rd. Electors shall in all cases, except treason, felony, or breach of the peace, be free from arrest in going to, during their attendance at, and in returning home from the election. (Conv. J., p. 15.)

43. Reported by committee as follows:

Sec. 4th. The legislature shall have full power to exclude from electing or being elected any person convicted of any infamous crime. (Conv. J., p. 15.)

44. Reported by committee as follows:

Sec. 5th. Nothing in this article shall be so construed as to prevent persons who were actual settlers at the time of adopting this constitution, or persons who have been absent from home on a visit or necessary business, from the privilege of electors. (Conv. J., p. 15.)

Amended in committee of the whole to read as follows:

Sec. 5th. Nothing in this article shall be so construed as to prevent citizens of the United States who were actual residents at the time of adopting this constitution, or citizens who by the existing laws of this territory are entitled to vote or persons who have been absent from home on a visit or necessary business, from the privilege of electors. (Conv. J., p. 23.)

ARTICLE VII.<sup>45</sup>

Sect. 1st. The Militia of the State of Indiana shall consist of all free able bodied male persons; Negroes, Mulattoes and Indians excepted, resident in the said state, between the ages of eighteen, and forty-five years, except such persons as now are, or hereafter may be exempted by the laws of the United States, or of this State; and shall be armed, equipped, and trained, as the general Assembly may provide by law.<sup>46</sup>

Sect. 2. No person or persons conscientiously scrupulous of bearing arms, shall be compelled to do Militia duty; provided such person or persons shall pay an equivalent for such exemption; which equivalent shall be collected annually, by a civil officer, and be hereafter fixed by law, and shall be equal as near as may be, to the lowest fines assessed on those privates in the Militia, who may neglect or refuse to perform Militia duty.<sup>47</sup>

Sect. 3. Captains and subalterns shall be elected by those per-

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45. Reported by Committee on the Militia on June 14. Considered by committee of the whole on June 18, amended and engrossed for second reading. Read second time on June 21, amended and referred to the Committee of Revisions. Reported back to Convention on June 25, and engrossed for third reading June 27, read third time and passed.

46. Reported by committee as follows:

Section 1. The militia of the State of ———, shall consist of all free able-bodied white male citizens, resident in the said state, between the ages of eighteen and forty-five years, except such persons as now are, or hereafter may be, exempted by the laws of the United States, and shall be armed, equipped, and trained, as the legislature may from time to time provide by law. (Conv. J., p. 20.)

Amended in committee of the whole, by consent, to read as follows:

Section 1. The militia of the State of ———, shall consist of all free able-bodied white male citizens, negroes, mulattoes, and Indians, excepted, resident in the said State, between the ages of eighteen and forty-five years, except such persons as now are, or hereafter may be, exempted by the laws of the United States, and of this State and shall be armed, equipped, and trained, as the legislature may from time to time provide by law. (Conv. J., p. 35.)

On second reading, the word "citizens" was stricken out and the word "persons" was inserted.

47. Reported by committee as follows:

Sec. 2. No person or persons, conscientiously scrupulous of bearing arms, shall be compelled to do militia duty, provided such person or persons will pay an equivalent for such exemption, which equivalent shall be hereafter fixed by law, and shall be equal as near as may be to the lowest fines assessed on those privates in the militia who may neglect or refuse to perform militia duty, and shall hereafter be fixed by law. (Conv. J., p. 20.)

mended in committee of the whole, by consent, to read as follows:

Sec. 2. No person or persons, conscientiously scrupulous of bearing arms, shall be compelled to do militia duty, provided such person or persons shall pay an equivalent for such exemption, which equivalent shall be hereafter fixed by law, and shall be collected annually by a civil officer and be equal as near as may be to the lowest fines assessed on those privates in the militia who may neglect or refuse to perform military (Conv. J., pp. 35, 44.)

An attempt to strike out the whole section was lost by a vote of 16-25. (Conv. J., p. 43.)



sons in their respective Company districts, who are subject to perform Militia duty, and the captain of each Company shall appoint the non-commissioned officers to said company.

Sect. 4. Majors shall be elected by those persons within the bounds of their respective Battalion districts, subject to perform Militia duty, and Colonels shall be elected by those persons within the bounds of their respective Regimental districts, subject to perform Militia duty.<sup>48</sup>

Sect. 5. Brigadier Generals shall be elected by the commissioned officers within the bounds of their respective brigades, and Major Generals shall be elected by the Commissioned officers within the bounds of their respective Divisions.<sup>49</sup>

Sect. 6. Troops and squadrons of Cavalry, and companies of Artillery riflemen, grenadiers, or light infantry, may be formed in the said state, in such manner as shall be prescribed by law: provided, however, that every troop or squadron of Cavalry, company of Artillery, riflemen, grenadiers, or light infantry which may hereafter be formed within the said state, shall elect their own officers.<sup>50</sup>

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48. Sections 3 and 4 were reported by the committee as follows:

Sec. 3. Captains and subalterns shall be elected by those citizens in their respective company districts who are subject to perform militia duty, and the captain of each company shall appoint the non-commissioned officers to said company.

Sec. 4. Majors shall be elected by those citizens within the bounds of their respective battalion districts subject to perform militia duty; and colonels shall be elected by those citizens within the bounds of their respective regimental districts subject to perform militia duty. (Conv. J., p. 20.)

On second reading, the word "citizens" was stricken out and the word "persons" inserted.

49. Reported by committee as follows:

Sec. 5. Brigadier-generals shall be elected by the commissioned officers within the bounds of their respective brigades; and major-generals shall be elected by the commissioned officers within the bounds of their respective divisions. (Conv. J., p. 21.)

Amended in committee of the whole, by consent, to read as follows:

Sec. 5. Brigadier-generals shall be elected by the commissioned officers within the bounds of their respective brigades; and major-generals shall be elected by the commissioned officers of their respective divisions. (Conv. J., p. 35.)

In recording an amendment to this section, the Journal is not clear whether the expression "within the bounds" is to be inserted or erased. It occurs in the original and in the section as finally adopted, but is omitted here, as this seems the more rational rendering of the language of the Journal. If it was omitted, it was subsequently restored.

An amendment was proposed that the whole of Section 5 be stricken out and the following inserted: "Major-generals and brigadier-generals shall be appointed by the governor, by and with the advice and consent of the senate." The proposal was lost by a vote of 9-33. (Conv. J., p. 43.)

50. Reported by committee as follows:

Sec. 6. Troops and squadrons of cavalry, and companies of artillery, may be formed in the said state in such manner as shall hereafter be prescribed by law: *Provided, however*, that every troop or squadron of cavalry, or company of artillery, which

Sect. 7. The Governor shall appoint the adjutant general, and quarter-master generals, as also his aids de camp.

Sect. 8. Major Generals shall appoint their aids de camp, and all other Division Staff officers; Brigadier Generals shall appoint their Brigade Majors, and all other Brigade Staff officers; and Colonels shall appoint their Regimental Staff officers.

Sect. 9. All militia officers shall be commissioned by the Governor, and shall hold their Commissions during good behaviour, or until they arrive at the age of sixty years.<sup>51</sup>

Sect. 10. The General Assembly shall, by law, fix the method of dividing the militia of the said State, into Divisions, Brigades, Regiments, Battalions, and Companies, and shall also fix the rank of all staff officers.<sup>52</sup>

## ARTICLE VIII.

Sect. 1. Every twelfth year, after this constitution shall have taken effect, at the general election held for Governor there shall be a poll opened, in which the qualified Electors of the State shall express, by vote, whether they are in favour of calling a convention, or not, and if there should be a majority of all the

may hereafter be formed within the said State, shall elect their own officers. (Conv. J., p. 21.)

Amended in committee of the whole, by consent, to read as follows:

Sec. 6. Troops and squadrons of cavalry, and companies of artillery, riflemen, grenadiers or light infantry, may be formed in the said state in such manner as shall hereafter be prescribed by law: *provided, however,* that every troop or squadron of cavalry, company of artillery, riflemen, grenadiers or light infantry, which may hereafter be formed within the said state, shall elect their own officers. (Conv. J., pp. 35, 44.)

51. Sections 7, 8, and 9 were reported as follows and not subsequently amended:

Sec. 7. The governor shall appoint the adjutant-general and quarter-master-generals, as also his aids-de-camp.

Sec. 8. Major-generals shall appoint their aids-de-camp, and all other division staff officers; brigadier-generals shall appoint their brigade-majors; and all other brigade staff officers, and colonels, shall appoint their regimental staff officers.

Sec. 9. All militia officers shall be commissioned by the governor, and shall hold their commissions during good behaviour, or until they shall arrive at the age of sixty years. (Conv. J., p. 21.)

52. Reported by committee as follows:

Sec. 10. The legislature shall, by law, fix the method of dividing the militia of the said State into divisions, brigades, regiments, battalions, and companies, and shall also fix the rank of all staff officers, adhering in these particulars, as near as may be, to the organization of the army of the United States.

Amended in committee of the whole, by consent, to read as follows:

Sec. 10. The legislature shall, by law, fix the method of dividing the militia of the said State into divisions, brigades, regiments, battalions, and companies, and shall also fix the rank of all staff officers, conforming in these particulars, as near as may be, to the organization of the army of the United States. (Conv. J., p. 35.)

Amended on second reading by a vote of 30-10, to read as follows:

Sec. 10. The legislature shall, by law, fix the method of dividing the militia of the said State into divisions, brigades, regiments, battalions, and companies, and shall also fix the rank of all staff officers. (Conv. J., p. 42.)

votes given at such election, in favour of a convention, the Governor shall inform the next General Assembly thereof, whose duty it shall be to provide, by law, for the election of the members to the convention, the number thereof, and the time and place of their meeting; which law shall not be passed unless agreed to by a majority of all the members elected to both branches of the General assembly, and which convention, when met, shall have it in their power to revise, amend, or change the [the] constitution. But, as the holding any part of the human Creation in slavery, or involuntary servitude, can only originate in usurpation and tyranny, no alteration of this constitution shall ever take place so as to introduce slavery or involuntary servitude in this State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted.<sup>53</sup>

#### ARTICLE IX.<sup>54</sup>

Sect. 1st. Knowledge and learning generally diffused, through a community, being essential to the preservation of a free Government, and spreading the opportunities, and advantages of educa-

53. Reported by Committee on Mode of Revision of the Constitution on June 13 as follows:

Every ——— year, at the general election held for governor, there shall be a poll opened in which the electors of the State shall express by vote whether they are in favor of calling a convention or not; and if there should be a majority of votes in favor of a convention, the governor shall inform the next legislature thereof, whose duty it shall be to provide by law for the election of the members to the convention, the number thereof, and the time and place of their meeting: Which law shall not be passed, unless agreed to by two-thirds of both branches of the legislature. (Conv. J., p. 14.)

June 18 and 19 considered in committee of the whole, amended and ordered engrossed. As ordered to engrossment the Article must have been in substantially the form in which it was adopted, unless extensive changes were made by the Committee on Revisions, which is unlikely. On June 20, the Article was considered on second reading, but no amendments were made. The following amendments were proposed and rejected: (1) By Johnson: To strike out the provisions that the convention when met, shall have it in their power to revise, amend or change the Constitution," and the provision forever prohibiting slavery and involuntary servitude, and inserting the following: "But as the holding any part of the human family in slavery or involuntary servitude, can only originate in usurpation and tyranny, it is the opinion of this convention, that no alteration of this constitution ought ever to take place, so as to introduce slavery or involuntary servitude in this State, otherwise than for the punishment of crimes, whereof the party has been duly convicted;" rejected by a vote of 13-29; (2) By Johnson: To strike out of the provision that the convention "when met, shall have it in their power to revise, amend or change the Constitution," which was rejected by a vote of 16-23; (3) By Johnson: To strike out the words "or involuntary servitude," which was rejected. (Conv. J., p. 38.) On June 25, the Committee on Revisions reported Article VIII back to the Convention and it was ordered engrossed for third reading. (Conv. J., p. 58.) On June 27, the Article was read a third time and passed. (Conv. J., p. 63.)

54. Reported by Committee on Education on June 25. Considered on second reading in committee of the whole on June 26, amended and referred to the Committee on Revisions. Read a third time on June 27 and passed.



tion through the various parts of the Country, being highly conducive to this end, it shall be the duty of the General Assembly to provide, by law, for the improvement of such lands as are, or hereafter may be granted, by the united States to this state, for the use of schools, and to apply any funds which may be raised from such lands, or from any other quarters to the accomplishment of the grand object for which they are or may be intended. But no lands granted for the use of schools or seminaries of learning shall be sold by authority of this state, prior to the year eighteen hundred and twenty; and the monies which may be raised out of the sale of any such lands, or otherwise obtained for the purposes aforesaid, shall be and remain a fund for the exclusive purpose of promoting the interest of Literature, and the sciences, and for the support of seminaries and public schools. The General Assembly shall from, time to time, pass such laws as shall be calculated to encourage intellectual, Scientifical, and agricultural improvement, by allowing rewards and immunities for the promotion and improvement of arts, sciences, commerce, manufactures, and natural history; and to countenance and encourage the principles of humanity, honesty, industry, and morality.<sup>55</sup>

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55. Reported by committee as follows:

Section 1. Knowledge and learning generally diffused through a community, being essential to the preservation of a free government, and spreading the opportunities and advantages of education through the various parts of the country being highly conducive to this end, it shall be the duty of the general assembly to provide by law, for the improvement of such lands as are or hereafter may be granted by the United States to this state, for the use of schools, and to apply any funds which may be raised from such lands, or from any other quarter, to the accomplishment of the grand object for which they are or may be intended. But no lands granted for the use of schools, shall be sold by the authority of this state, prior to the year ——— and the monies which may be raised out of the sale of any such lands, or otherwise obtained, for the purposes aforesaid, shall be and remain a fund, for the exclusive purpose of promoting the interest of literature and the sciences, and for the support of seminaries and public schools. The general assembly shall, from time to time, pass such laws as shall be calculated to encourage intellectual, scientifical, and agricultural, improvement, by allowing rewards and immunities for the promotion and improvement of arts, sciences, commerce, manufactures, and natural history; and to countenance and encourage the principles of humanity, honesty, industry, and morality. (Conv. J., p. 56.)

Amended on second reading, by consent, to read as follows:

Section 1. Knowledge and learning generally diffused through a community, being essential to the preservation of a free government, and spreading the opportunities and advantages of education through the various parts of the country being highly conducive to this end, it shall be the duty of the general assembly to provide by law, for the improvement of such lands as are or hereafter may be granted by the United States to this state, for the use of schools, and to apply any funds which may be raised from such lands, or from any other quarter, to the accomplishment of the grand object for which they are or may be intended. But no lands granted for the use of schools or seminaries of learning, shall be sold by the authority of this state, prior to the year 1820, and the monies which may be raised out of the sale of any such lands, or otherwise obtained, for the purposes aforesaid, shall be and remain a fund, for the exclusive purpose of promoting the interest of literature and the sciences, and for the support of seminaries and public schools. The general assembly shall, from time to time, pass such laws

Sect. 2. It shall be the duty of the General assembly, as soon as circumstances will permit, to provide, by law, for a general system of education, ascending in a regular gradation, from township schools to a state university, wherein tuition shall be gratis, and equally open to all.<sup>56</sup>

Sect. 3. And for the promotion of such salutary end, the money which shall be paid, as an equivalent, by persons exempt from militia duty except, in times of war, shall be exclusively, and in equal proportion, applied to the support of County seminaries; also all fines assessed for any breach of the penal laws, shall be applied to said seminaries, in the Counties wherein they shall be assessed.<sup>57</sup>

Sect. 4. It shall be the duty of the General assembly, as soon as circumstances will permit, to form a penal Code, founded on the principles of reformation, and not of vindictive Justice: and also to provide one or more farms to be an asylum for those persons, who by reason of age, infirmity, or other misfortunes, may have a claim upon the aid and beneficence of society; on such principles, that such persons may therein, find employment, and every reasonable comfort and lose, by their usefulness, the degrading sense of dependence.

Sect. 5. The General Assembly, at the time they lay off a new County, shall cause, at least, ten per cent to be reserved out of the proceeds of the sale of town lots, in the seat of Justice of such county, for the use of a public library for such County, and at the

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as shall be calculated to encourage intellectual, scientific, and agricultural, improvement, by allowing rewards and immunities for the promotion and improvement of arts, sciences, commerce, manufactures, and natural history; and to countenance and encourage the principles of humanity, honesty, industry, and morality. (Conv. J., p. 60.)

56. Section 2 was reported by the committee as follows, and no subsequent amendments are recorded:

Sec. 2. It shall be the duty of the general assembly, as soon as circumstances will permit, to provide by law for a general system of education, ascending in a regular gradation, from township schools to a state university, wherein tuition shall be gratis, and equally open to all. (Conv. J., p. 57.)

57. Reported by committee as follows:

Sec. 3. And for the promotion of such salutary end, the money which shall be paid as an equivalent by persons exempt from militia duty, shall be exclusively, and in equal proportion, applied to the support of county seminaries; also, all fines assessed for any breach of the penal laws, shall be applied to the said seminaries, in the counties wherein they shall be assessed. (Conv. J., p. 57.)

Amended on second reading, by consent, to read as follows:

Sec. 3. And for the promotion of such salutary end, the money which shall be paid as an equivalent by persons exempt from militia duty, except in times of war, shall be exclusively, and in equal proportion, applied to the support of county seminaries; also, all fines assessed for any breach of the penal laws, shall be applied to the said seminaries, in the counties wherein they shall be assessed. (Conv. J., p. 60.)

the same session, they shall incorporate a library company, under such rules and regulations as will best secure its permanence, and extend its benefits.<sup>58</sup>

## ARTICLE X.<sup>59</sup>

Sect. 1st. There shall not be established or incorporated, in this state, any Bank or Banking company or monied institution, for the purpose of issuing bills of credit, or bills payable to order or bearer; Provided that nothing herein contained shall be so construed as to prevent the General assembly from establishing a State Bank, and branches, not exceeding one branch for any three Counties, and be established at such place, within such Counties, as the directors of the State Bank may select; provided there be subscribed, and paid in specie, on the part of individuals, a sum equal to thirty thousand dollars: Provided also, that the Bank at Vincennes, and the Farmers' and Mechanics' Bank of Indiana, at Madison, shall be considered as incorporated Banks, according to the true tenor of the charters granted to said Banks, by the Legislature of the Indiana Territory: Provided that nothing herein contained shall be so construed, as to prevent the General Assembly from adopting either of the aforesaid Banks as the State Bank: and in case either of them shall be adopted as the State Bank, the other may become a branch, under the rules and regulations herein before prescribed.<sup>60</sup>

58. Sections 4 and 5 were reported by the committee as follows, no subsequent amendments being recorded:

Sec. 4. It shall be the duty of the general assembly, as soon as circumstances will permit, to form a penal code, founded on the principle of reformation, and not of vindictive justice; and also to provide one or more farms, to be an asylum for those persons who by reason of age, infirmity, or other misfortunes, may have a claim on the aid and beneficence of society, on such principles, that such persons may therein find employment, and every reasonable comfort, and lose by their usefulness, the degrading sense of dependence.

Sec. 5. The general assembly shall cause at least ten per cent to be reserved out of the proceeds of the sales of town lots, in the seat of justice of each county, for the use of a public library, for such county; and at the same session, they shall incorporate a library company, under such rules and regulations as will best secure its permanence, and extend its benefits. (Conv. J., p. 57.)

59. Reported by Committee on Banks and Banking Companies on June 24. Considered in committee of the whole on June 25 and 27 and amended. Read a third time on June 28 and passed.

60. Reported by committee as follows, the amendments made thereto are not recorded:

Section 1. There shall not be established or incorporated in the State, any bank or banking companies, or monied institutions, for the purpose of issuing bills of credit, or bills payable to order or bearer: *Provided*, That nothing herein contained shall be so construed as to prevent the general assembly from establishing a State bank, and branches of said bank: *Provided, also*, That the bank at Vincennes, and the Farmers' and Mechanics' bank of Indiana, at Madison, shall be considered as incorporated banks, according to the true tenor of the charters granted to said banks by the legislature of the Indiana territory. (Conv. J., p. 52.)



ARTICLE XI<sup>61</sup>

§1st. Every person who shall be chosen, or appointed to any office of trust or profit, under the authority of this state, shall, before entering on the duties of said office, take an oath or affirmation, before any person lawfully authorised to administer oaths, to support the constitution of the united States, and the constitution of this state, and also an oath of office.

§2d. Treason against this state, shall consist only in levying war against it, in adhering to its enemies, or giving them aid and comfort.

§3d. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.<sup>62</sup>

§4th. The manner of administering an oath, or affirmation, shall be such as is most consistent with the conscience of the deponent, and shall be esteemed the most solemn appeal to God.<sup>63</sup>

§5th. Every person shall be disqualified from serving as Governor, Lieutenant Governor, Senator, or Representative, for the term for which he shall have been elected, who shall have been convicted of having given, or offered, any bribe, treat, or reward to procure his election.<sup>64</sup>

61. Reported by Committee on General Provisions on June 21. Considered by the committee of the whole on June 24, amended and ordered engrossed for second reading. Read a second time on June 26 and 27, amended, and referred to the Committee on Revisions. On June 28, the Committee on Revisions reported Article XI back to the Convention with amendments, when it was read a third time and passed.

62. Sections 1, 2 and 3 were reported by the committee as follows, the amendments subsequently made thereto not being recorded in the Journal:

Section 1. Every person who shall be chosen or appointed to any office of trust or profit, under the authority of this State, shall, before entering on the duties of said office, take an oath or affirmation to support the constitution of the United States, and the constitution of this State, and also an oath of office.

Sec. 2. Treason against this State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort.

Sec. 3. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or his own confession in open court. (Conv. J., p. 41.)

63. Reported by committee as follows:

Sec. 4. The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed by the general assembly the most solemn appeal to God. (Conv. J., p. 41.)

Amended in committee of the whole, by consent, to read as follows:

Sec. 4. The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed the most solemn appeal to God. (Conv. J., p. 53.)

64. Reported by committee as follows, no subsequent amendments being recorded:

Sec. 5. Every person shall be disqualified from serving as governor or lieutenant-governor, senator or representative, for the term for which he shall have been elected, who shall have been convicted of having given or offered any bribe, treat or reward to procure his election. (Conv. J., p. 41.)

§6th. All officers shall reside within the state; and all District, County, or Town officers, within their respective Districts, Counties, or towns (the trustees of the town of Clarksville excepted) and shall keep their respective offices, at such places therein, as may be directed by law; and all Militia officers shall reside within the bounds of the Division, Brigade, Regiment, Battalion or company to which they may severally belong.<sup>65</sup>

§7th. There shall be neither slavery nor involuntary servitude in this state, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted. Nor shall any indenture of any negro or mulatto hereafter made, and executed out of the bounds of this state be of any validity within the state.<sup>66</sup>

§8th. No act of the General assembly shall be in force until it shall have been published in print, unless in cases of emergency.<sup>67</sup>

§9th. All commissions shall be in the name, and by the authority of the State of Indiana; and sealed with the State Seal,

65. Reported by committee as follows:

Sec. 6. All officers shall reside within the State; and all district, county, or town officers, within their respective districts, counties, or towns (trustees of towns excepted), and shall keep their respective offices at such places therein as may be directed by law; and all militia officers shall reside within the bounds of the division, brigade, regiment, battalion, or company, to which they may severally belong. (Conv. J., p. 41.)

Amended in committee of the whole, by consent, as follows:

Sec. 6. All officers shall reside within the State; and all district, county, or town officers, within their respective districts, counties or towns (the trustees of the town of Clarksville excepted), and shall keep their respective offices at such places therein as may be directed by law; and all militia officers shall reside within the bounds of the division, brigade, regiment, battalion, or company, to which they may severally belong. (Conv. J., p. 53.)

66. Reported by committee as follows:

Sec. 7. There shall be neither slavery, nor involuntary servitude, in this State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted; nor shall any male person, arrived at the age of twenty-one years, nor female person, arrived at the age of eighteen years, be held to serve any person as a servant under pretence of indenture or otherwise, unless such person shall enter into such indenture while in a state of perfect freedom, and on condition of a bona fide consideration received, or to be received for his or her service, except as before excepted: Nor shall any indenture of any negro, or mulatto, hereafter made and executed out of the bounds of this State, be of any validity within the State; neither shall any indenture of any negro or mulatto, hereafter made within the State, be of the least validity except in the case of apprenticeships. (Conv. J., p. 41.)

Amended in the committee of the whole, by consent to read as follows:

Sec. 7. There shall be neither slavery, nor involuntary servitude, in this State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted; nor shall any indenture of any negro, or mulatto, hereafter made and executed out of the bounds of this State, be of any validity within the State. (Conv. J., p. 53.)

67. Reported by committee as follows, no subsequent amendments being recorded:

Sec. 8. No act of the legislature shall be in force until it shall have been published in print unless in cases of emergency. (Conv. J., p. 42.)

and signed by the Governor, and attested by the secretary of state.<sup>68</sup>

§10th. There shall be elected in each county a Recorder, who shall hold his office during the term of seven years, if he shall so long behave well: Provided that nothing herein contained shall prevent the clerks of the circuit Courts from holding the office of recorder.<sup>69</sup>

§11th. Corydon, in Harrison County shall be the seat of Government of the state of Indiana, until the year eighteen hundred and twenty-five, and until removed by law.<sup>70</sup>

§12. The General assembly, when they lay off any new county, shall not reduce the old county, or counties, from which the same shall be taken to a less content than four hundred square miles.<sup>71</sup>

§13. No persons shall hold more than one lucrative office at

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68. Proposed and adopted by consent as an additional section on second reading as follows:

Sec. 9. All commissions shall be in the name and by the authority of the State of Indiana, and sealed with the State seal, and signed by the governor, and attested by the secretary of state. (Conv. J., p. 61.)

69. Proposed and adopted by consent as an additional section on second reading as follows:

Sec. 10. There shall be elected, in each county, a recorder, who shall hold his office during the term of seven years: *Provided* he shall so long behave himself well: *And provided also*, nothing herein contained shall prevent the clerks of the circuit courts from being elected to the office of recorder. (Conv. J., p. 61.)

70. Proposed and adopted by consent as an additional section on second reading as follows:

Sec. 11. Corydon in Harrison county shall be the seat of government of the State of Indiana, until the year eighteen hundred and twenty-five, and until removed by law. (Conv. J., p. 61.)

71. Proposed and adopted by a vote of 23-16 as an additional section on second reading as follows:

Sec. 12. The general assembly, when they lay off any new county, shall not reduce the old county or counties, from which the same shall be taken, to a less content than four hundred square miles. (Conv. J., p. 61.)

Attempts to amend this Section by adding the words, "except counties bordering on the Ohio river," and to strike out the entire section, were lost. (Conv. J., p. 64.)

A Section, substantially identical, was proposed on June 24 and adopted. It was to be numbered Section 9 and was as follows:

Proposed Section 9. No new county shall be established by the general assembly, which shall reduce the county or counties, or either of them from which it shall be taken, to less contents than four hundred square miles; nor shall any county be laid off of less contents. (Conv. J., p. 53.)

On June 26 proposed Section 9 was amended to read as follows:

Proposed Section 9. No new county shall be established by the general assembly which shall reduce the county or counties, or either of them from which it shall be taken, to less contents than four hundred square miles, nor shall any county be laid off of less contents, except counties bordering on the Ohio and Wabash rivers, and in such other parts of the State as may be naturally circumscribed, so as to render such small county or counties necessary. (Conv. J., p. 60.)

Immediately after amendment, the entire section was stricken out by a vote of 26-14.



the same time, except as in this constitution is expressly permitted.<sup>72</sup>

§14. No person shall be appointed as a County officer, within any county, who shall not have been a citizen and an inhabitant therein one year next preceding his appointment; if the county shall have been so long erected, but if the county shall not have been so long erected, then within the limits of the county or counties, out of which it shall have been taken.<sup>73</sup>

§15. All town, and township officers shall be appointed in such manner as shall be directed by law.<sup>74</sup>

§16. The following officers of Government shall not be allowed greater annual salaries, until the year eighteen hundred and nineteen than as follows—The Governor one thousand dollars. The Secretary of State, four hundred dollars. The Auditor of public accounts four hundred dollars. the Treasurer four hundred dollars. The Judges of the supreme court eight hundred dollars each. The Presidents of the Circuit Courts eight hundred dollars each, and the members of the General assembly, not exceeding two dollars per day each, during their attendance on the same, and two dollars for every twenty five miles they shall severally travel on the most usual route, in going to, and returning from the General assembly: after which time their pay shall be regulated by law. But no law, passed to increase the pay of the members of the General assembly, shall take effect, until after the close of the session at which such law shall have been passed.<sup>75</sup>

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72. Proposed and adopted by consent as an additional section on second reading as follows:

Sec. 13. No person shall hold more than one lucrative office at the same time, except as in this constitution is expressly permitted. (Conv. J., p. 62.)

73. Proposed as Section 26 by the Committee on Legislative Department; transferred to Article on general provisions; (Conv. J., p. 60) originally submitted as follows:

Sec. 26. No person shall be appointed to any office within any county who shall not have been a citizen and an inhabitant thereof two years next before his appointment, if the county shall have been so long erected; but if the county shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken. (Conv. J., p. 18.)

74. There is no record of the origin of this section.

75. Proposed as Section 28 by the Committee on Legislative Department; transferred to Article on general provisions; (Conv. J., p. 60) originally submitted as follows:

Sec. 28. The legislature of this State shall not allow the following officers of government a greater annual salary than as follows: (Conv. J., p. 19.)

On June 26, the following section was proposed and adopted by consent.

The general assembly of this State shall not allow the following officers of government, as their annual salaries, until the year one thousand eight hundred and twenty, after which time their salaries shall be fixed as the general assembly may direct, to wit: The governor not more than one thousand dollars; the judges of the supreme court eight hundred dollars each; the presidents of the circuit courts eight hundred dollars each; the secretary of state four hundred dollars; the auditor of public accounts

§17. In order that the boundaries of the state of Indiana may more certainly be known & established; It is hereby ordained and declared, that the following shall be, and forever remain the boundaries of the said state to wit, Bounded on the east by the meridian line which forms the western boundary of the state of Ohio, On the south by the Ohio river, from the mouth of the Great Miami river, to the mouth of the river Wabash; On the west by a line drawn along the middle of the Wabash river from its mouth to a point, where a due north line drawn from the town of Vincennes, would last touch the northwestern shore of the said Wabash River; and from thence by a due north line until the same shall intersect an east and west line drawn through a point ten miles north of the southern extreme of lake Michigan; On the north by said east and west line, until the same shall intersect the first mentioned meridian line, which forms the western boundary of the State of Ohio.<sup>76</sup>

## ARTICLE XII.<sup>77</sup>

Sect. 1st. That no evils or inconvenience may arise from the change of a Territorial Government to a permanent State Government, it is declared by this Convention that all rights, suits, actions, prosecutions, recognizances, contracts, and claims, both as it respects individuals and bodies corporate, shall continue as if no change had taken place in this Government.

Sect. 2. All fines penalties and forfeitures, due, and owing to the Territory of Indiana or any County therein, shall inure to the use of the State or County. All bonds executed to the Governor,

three hundred dollars; the treasurer three hundred dollars; no member of the general assembly more than two dollars per day during his attendance on the general assembly, nor more for every twenty-five miles he shall travel in going to, and returning from the general assembly. (Conv. J., p. 62.)

An attempt to fix the compensation of members of the General Assembly at one dollar per day instead of two dollars was lost by a vote of 14-28. (Conv. J., p. 62.) A subsequent attempt to reduce the compensation of the members of the General Assembly from two dollars to one dollar and twenty-five cents was rejected by a vote of 6-32. (Conv. J., p. 63.) The following proposed amendment is not clear: "Mr. Robb then moved to amend the sixteenth section by striking out of the same after the word 'treasurer' in the fourth line, the words 'four hundred' and inserting in lieu thereof, the words 'three hundred.'" Rejected by a vote of 12-26. (Conv. J., p. 63.)

As amended, the section was adopted by a vote of 25-11.

76. There is no record of the origin of this section, but the substance is taken from the Enabling Act.

77. Reported by Committee on Change of Government on June 24. Considered in committee of the whole on June 25 and 27, amended and referred to Committee on Revisions. Reported back by the Committee on Revisions on June 28, read a third time and passed.

or any other officer in his official Capacity in the Territory, shall pass over to the Governor or other officers of the State or County, and their successors in office, for the use of the State or County, or by him or them to be respectively assigned over to the use of those concerned as the case may be.

Sect. 3. The Governor, secretary, and Judges, and all other officers both civil and military, under the Territorial Government, shall continue in the exercise of the duties of their respective departments, until the said officers are superceded under the authority of this constitution.

Sect. 4. All laws and parts of laws now in force in this Territory not inconsistent with this constitution, shall continue and remain in full force and effect, until they expire or be repealed.

Sect. 5th. The Governor shall use his private seal, until a state seal be procured.

Sect. 6th. The Governor, secretary of state, auditor of public accounts, and Treasurer, shall severally reside and keep all the public records books, and papers in any manner relating to their respective offices, at the seat of Government; provided notwithstanding that nothing herein contained shall be so construed, as to affect the residence of the Governor for the space of six months, and until buildings suitable for his accommodation, shall be procured at the expence of the state.

Sect. 7th. All suits, pleas, complaints and other proceedings now depending in any Court of record or Justices Courts shall be prosecuted to final Judgment and execution and all appeals, writs of error certiorari injunction or other proceedings whatsoever, shall progress and be carried on in the respective Court or Courts in the same manner as is now provided by law, and all proceedings had therein in as full and complete a manner as if this constitution were not adopted. And appeals and writs of error may be taken from the circuit court, and General Court, now established in the Indiana Territory, to the supreme court, in such manner as shall be provided for by law.

Sect. 8. The President of this convention shall issue writs of election, directed to the several sheriffs of the several Counties, requiring them to cause an election to be held for a Governor, Lieutenant Governor, a Representative to the Congress of the united States, Members of the General Assembly, sheriffs and Coroners, at the respective election districts in each County on the first Monday in August next: which election shall be conducted in the manner prescribed by the existing election laws of the In-



diana Territory; and the said Governor, Lieutenant Governor, members of the General Assembly, sheriffs and coroners, then duly elected, shall continue to exercise the duties of their respective offices for the time prescribed by [by] this constitution and until their successor or successors are qualified, and no longer.<sup>78</sup>

Sec. 9. Until the first enumeration shall be made, as directed by this constitution, the County of Wayne shall be entitled to one senator, and three Representatives; the County of Franklin, one senator, and three Representatives the County of Dearborn, one senator, and two Representatives; the County of Switzerland, one Representative and the County of Jefferson and Switzerland one senator and the County of Jefferson two Representatives; the County of Clark one senator, and three Representatives; the

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78. Sections 1, 2, 3, 4, 5, 6, 7 and 8 were reported by the committee as follows, no subsequent amendments being recorded:

Section 1. That no evils or inconvenience may arise from the change of a territorial government to a permanent State government, it is declared by this Convention, that all rights, suits, actions, prosecutions, recognizances, and contracts, both as it respects individuals, and bodies corporate, shall continue as if no change had taken place in this government.

Sec. 2. All fines, penalties, and forfeitures, due and owing to the territory of Indiana, shall inure to the use of the State; all bonds executed to the governor, or any other officer, in his official capacity in the territory, shall pass over to the governor, or other officers of the State, and their successors in office, for the use of the State, or by him or them to be respectively assigned over to the use of those concerned, as the case may be.

Sec. 3. The governor, secretary, and judges, and all other officers, both civil and military, under the territorial government, shall continue in the exercise of the duties of their respective departments until the said officers are superceded under the authority of this constitution.

Sec. 4. All laws, and parts of laws, now in force in this territory, not inconsistent with this constitution, shall continue and remain in full force and effect until repealed by the legislature.

Sec. 5. The governor shall use his private seal until a State seal be procured.

Sec. 6. The governor, secretary of state, auditor of public accounts, and treasurer, shall severally reside and keep all the public records, books, and papers, in any manner relating to their respective offices, at the seat of government: *Provided notwithstanding*, That nothing herein contained shall be so construed as to affect the residence of the governor, for the space of six months, and until buildings suitable for his accommodation shall be procured at the expense of the State.

Sec. 7. All suits, pleas, complaints, and other proceedings, now depending in any court of record or justices court, shall be prosecuted to final judgment and execution; and all appeals, writs of error, certiorari, injunction, or other proceedings whatever, shall progress and be carried on in the respective court or courts, in the same manner as is now provided by law, and all proceedings had therein in as full and complete a manner as if this constitution had not have been adopted.

Sec. 8. The president of this convention shall issue writs of election, directed to the several sheriffs of the several counties, requiring them to proceed to the election of a governor, lieutenant-governor, members of the general assembly, sheriffs, and coroners, at the respective election districts, in each county, on the ——— day of ———; which election shall be conducted in the manner prescribed by the existing election laws of the Indiana territory; and the said governor, lieutenant-governor, members of the general assembly, sheriffs, and coroners, then duly elected, shall continue to exercise the duties of their respective offices for the time prescribed by this constitution, or until the next annual, biennial, triennial, elections, as particularly directed by this constitution, and no longer. (Conv. J., pp. 51-2.)

County of Harrison one senator, and three Representatives; the Counties of Washington, Orange, and Jackson one senator and the County of Washington two Representatives; the Counties of Orange and Jackson one Representative each; the County of Knox one senator, and three Representatives; the County of Gibson one senator and two representatives; the Counties of Posey Warrick and Perry one senator, and each of the aforesaid Counties of Posey, Warrick, and Perry, one Representative.<sup>79</sup>

Sect. 10. All books, records, documents, warrants and papers, appertaining and belonging to the office of the Territorial Treasurer of the Indiana Territory; and all monies therein, and all papers and documents in the office of the Secretary of said Territory, shall be disposed of as the General Assembly of this State may direct.<sup>80</sup>

Sect. 11. All suits, actions, pleas, complaints, prosecutions, and causes whatsoever, and all records, Books, papers and documents now in the General Court, may be transferred to the supreme Court established by this constitution. And all causes, suits, actions, pleas, complaints, and prosecutions whatsoever, now existing or pending in the circuit Courts of this Territory, or which may be therein at the change of Government, and all records, books, papers and documents relating to the said suits, or filed in the said Courts, may be transferred over to the circuit Courts established by

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79. Reported by committee as follows.

Sec. 9. Until the first enumeration shall be made as directed by this constitution, the county of Wayne shall be entitled to one senator and two representatives; the county of Franklin, to one senator and three representatives; the county of Dearborn, one senator and two representatives; the county of Switzerland, one representative; and the county of Jefferson and Switzerland, one senator; and the county of Jefferson, two representatives; the county of Clark, one senator and two representatives; the county of Harrison, one senator and two representatives; the counties of Washington, Orange and Jackson, one senator, and each of the said counties of Washington, Orange, and Jackson, one representative; the county of Knox, one senator and three representatives; the county of Gibson, one senator and two representatives; the counties of Posey, Warrick, and Perry, one senator; and each of the aforesaid counties of Posey, Warrick, and Perry, one representative. (Conv. J., p. 52.)

The representation of Wayne county in the lower house was increased from two to three, by a vote of 24-17. The number of representatives from Clark and Harrison counties was increased from two to three, respectively, by consent; the representation from Washington county was increased from one to two representatives by a vote of 25-16. The Convention refused to increase the number of representatives from Orange from one to two, by a vote of 21-20. An attempt to decrease the number of representatives of Jefferson county from two to one was lost by a vote of 6-35.

80. Section 10, was proposed on second reading and adopted by consent as follows:

Sec. 10. All books, records, documents, warrants and papers, appertaining and belonging to the office of the territorial treasurer of the Indiana territory, and all monies therein, and all papers and documents in the office of the secretary of the said territory, shall be disposed of as the general assembly of this State may direct. (Conv. J., p. 66.)

this constitution, under such rules and regulations, as the General Assembly may direct.<sup>81</sup>

Done in Convention at Corydon, on the twenty ninth day of June in the year of our Lord eighteen hundred and sixteen, and of the Independence of the United States the fortieth.

In witness whereof we have hereunto subscribed our names.

JONATHAN JENNINGS,

President of the Convention and Delegate from the County of Clark.

THOMAS CARR, JOHN K. GRAHAM, JAMES LEMON, JAMES SCOTT,	}	Delegates in Convention from the County of Clark.
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JAMES DILL, EZRA FERRIS, SOLOMON MANWARING,	}	Delegates in Convention from the County of Dearborn.
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JAMES BROWNLEE, WILLIAM H. EADS, ROBERT HANNA, ENOCH McCARTY, JAMES NOBLE,	}	Delegates in Convention from the County of Franklin.
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ALEXANDER DEVIN, FREDC RAPP, DAVID ROBB, JAMES SMITH,	}	Delegates in Convention from the County of Gibson.
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JOHN BOONE, DAVIS FLOYD, DANIEL C. LANE DENNIS PENNINGTON, PATRICK SHIELDS,	}	Delegates in Convention from the County of Harrison.
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NATH'L HUNT, DAVID H. MAXWELL, SAMUEL SMOCKE,	}	Delegates in Convention from the County of Jefferson.
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81. There is no record of the origin of this section.



JOHN BADOLLET,  
JOHN BENEFIEL,  
JNO. JOHNSON,  
WM. POLKE,  
B. PARKE,

} Delegates in Convention from the  
County of Knox.

CHARLES POLKE, Delegate from the County of Perry.  
DANN LYNN, Delegate from the County of Posey.  
WILLIAM COTTON, Delegate from the County of Switzerland.

JOHN DE PAUW,  
WILLIAM GRAHAM,  
WILLIAM LOWE,  
SAMUEL MILROY,  
ROBERT MCINTIRE,

PATRICK BEARD,  
JEREMIAH COX,  
HUGH CULL,  
JOSEPH HOLEMAN.

}  
Attest,  
WILLIAM HENDRICKS, Secretary.

**47. Reservation of Salt Springs and The Seminary Township (June 19, 1816).**

[*Convention Journal*, 36.]

*Resolved*, That Jonathan Lindley, Benjamin Parke, and James Noble, be appointed to designate to the Register of the Land Office at Vincennes, or to the Register of the Land Office at Jeffersonville, a township the most proper to be reserved for the state, for the use of a seminary of learning, and such lands as may be necessary to be reserved for the use of salt springs; and that they request the Register of the Land Office, and receiver of public money, in the district in which such township or land shall respectively lay, to request the President to reserve the same for the purpose aforesaid.

**48. Transmission of Ordinance to President and Congress (June 27, 1816).**

[*Convention Journal*, 66.]

*Ordered*, That three copies of the ordinance relative to the acceptance of the propositions of Congress, and the stipulations on the part of this convention, be made out by the secretary; that the

same be signed by the president and attested by the secretary; and by the president forwarded, one copy to the president of the United States, one copy to the president of the senate, and another copy to the speaker of the house of representatives.<sup>82</sup>

**49. Transmission of Constitution to President and Congress (June 28, 1816).**

[*Convention Journal*, 68.]

*Resolved*, That the president of this convention do forward one printed copy of the constitution to the president of the United States, one to the president of the senate, and one to the speaker of the house of representatives of congress.

**50. Printing and Distribution of Constitution and Journals (June 28 and 29, 1816).**

[*Convention Journal*, 67.]

*Resolved*, That this convention recommend to the early attention of the first general assembly of the State of Indiana, the necessity of making appropriations to pay for the printing of the journals of the convention, and constitution of the state.<sup>83</sup>

[*Convention Journal*, 67.]

*Resolved*, That the committee appointed to contract for printing the constitution and journals of this convention, be authorised to have them, when printed, stitched and forwarded to the several counties, to wit: To each member of this convention, eleven copies; to each of the secretaries, two copies; and the residue to be lodged in the secretary's office, for the use of the state.

[*Convention Journal*, 68.]

*Resolved*, That there shall be two complete copies of the constitution of Indiana, one of which shall be lodged with the presi-

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82. On January 9, 1817, the President of the United States Senate laid before the Senate a letter from Jonathan Jennings, the president of the Convention, with a copy of the Indiana Constitution. (Annals, 14th Congress, 2d Session, 55.)

83. The first General Assembly appropriated \$200 to pay Mann Butler for printing and stitching the Constitution and Journals. (Laws, 1st Session, 239.) On December 15, 1817, a communication from Mann Butler, concerning the printing and binding of the Constitution and the Journals was presented to the House and referred to the Ways and Means Committee for consideration; this Committee, on December 30, reported that \$200 had already been paid for this work and that the claim ought not to be paid again, a conclusion in which the House concurred. (House Journal, 2d Session, 54 and 104.) At the 3d session a similar claim was before the House and was again rejected. (House Journal, 3d Session, 165 and 205.)

dent of the convention, to be kept by him until the meeting of the first general assembly, at which time the constitution shall be laid before them, and to be disposed of in such manner as they may direct.<sup>84</sup>

[*Convention Journal*, 69.]

*Resolved*, That Messrs. James Lemon and Robert A. New, be appointed as a committee to superintend the printing of the constitution of the State of Indiana; and that they report to the first general assembly.<sup>85</sup>

**51. Compensation of Officers of Convention (June 28, 1816).**

[*Convention Journal*, 67.]

*Resolved*, That there be allowed to the secretary of this convention, the sum of three dollars and fifty cents per day; to the assistant secretaries each, three dollars and fifty cents per day; to the door keeper, the sum of one dollar and fifty cents per day; and to the assistant door keeper, one dollar and fifty cents per day, for their services respectively, during their attendance on this convention, and that the general assembly shall provide by law for the payment of the said officers, respectively; which services shall be certified by the president of this convention.<sup>86</sup>

**52. Harrison County Library (June 28, 1816).**

[*Convention Journal*, 68.]

*Resolved*, That it be recommended to the general assembly of the State of Indiana, to appropriate the money voluntarily given by the citizens of Harrison county to the state, to the purchase of books for a library for the use of the legislature and other officers of government; and that the said general assembly will, from time to time, make such other appropriations for the increase of said library, as they may deem necessary.

**53. Slavery and Exemption from Military Service (June 13, 1816).**

The only important petitions presented to the Convention by the citizens of the territory were submitted on June 13, by the inhabitants of

84. On November 11, 1816, at the first session, the Governor delivered a copy of the Constitution to the Senate and the Senate ordered this copy deposited with the Secretary of State for safe-keeping. (*Senate Journal*, 1st Session, 20.)

85. The report of Messrs. Lemon and New was made to the House at the 1st. Session on December 28, 1816. (*House Journal*, 1st Session, 105.)

86. By an act of December 27, 1816, the secretaries were allowed \$3.50 per day and the Door-keepers \$2.00 per day. (*Laws*, 1st Session, 239.)



Wayne county, recommending constitutional provisions prohibiting the introduction of slavery, and granting the Quakers exemption from military duty in time of peace. The former was referred to the Committee on General Provisions, and the latter to the Committee on Military Affairs.

[*Convention Journal*, 19.]

*Ordered*, That so much of said memorial as relates to said society of friends, be referred to the Committee on Military Affairs; and that so much of said memorial as relates to the subject of slavery, be referred to the Committee relative to General Provisions.

**54. Official Notice of First Election in State of Indiana (June 29, 1816).**

In conformity with the provisions of the Constitution, Jonathan Jennings, the President of the Convention issued the following official notice to the sheriffs of the several counties of the State authorizing and requiring them to give due notice of the first state election to be held on the first Monday in August, 1816.

[*Western Sun*, July 6, 1816.]

**THE STATE OF INDIANA**

To the Sheriff of Knox county, Greeting:

*Whereas* the convention of the said state of Indiana, by the 8th section of the 12th article of the Constitution of the said state, did order and direct that the president of the said convention, should issue writs of election to the sheriffs of the respective counties in the said state of Indiana, requiring and commanding the said sheriffs to proceed on the first Monday in August next, to the election of the various officers in the said section specified.

Now, therefore, know ye, that I, Jonathan Jennings, President of the said convention, do hereby require and command you, that you proceed to notify according to law, the qualified electors within your bailiwick, that they meet at the usual places of holding elections within the said county, on the first Monday in August next, and do then and there on the said day, proceed agreeably to the existing laws of the territory, to elect one Governor, one Lieutenant Governor, one Representative to represent the said state in the Congress of the United States; one Senator and three representatives, to represent the said county of Knox in the General Assembly of the said state; one Sheriff and one Coroner, for the said county of Knox, and make return of the said election as the law directs, enclosed and sealed up, directed to the speaker of

the House of Representatives of the said state at Corydon; herein fail not.—Given under my hand and seal this 29th day of June A.D. 1816.

JONATHAN JENNINGS,  
President of the Convention.

#### 55. Official Election Notice in Knox County (July 4, 1816).

In compliance with the order issued by Jonathan Jennings, President of the Convention, the Sheriff of Knox county issued the following election notice to the voters of Knox county on July 4, 1816.

*[Western Sun, July 6, 1816.]*

State of Indiana,  
Knox County.

By virtue of a writ of election to me directed by Jonathan Jennings, President of the Convention, I do hereby give notice that an election will be holden on the first Monday in August next in the several townships throughout this county at their respective appointed places—the election to be holden under the Inspector, Judges and Clerks appointed and chosen for that purpose for the present year, agreeably to the now existing laws of the territory for one Governor, one Lieutenant Governor, one Representative to represent the state in the Congress of the U. States; one Senator and three Representatives to represent this county in the State Legislature; one Sheriff and one Coroner, for the said county of Knox;—at which time and places, the Inspector, Judges, and Clerks aforesaid of each Township are hereby required to attend.

B. V. BECKES,  
July 4, 1816. Sheriff of Knox County.

#### 56. Formal Admission of Indiana to Union (December 11, 1816).

By the adoption of the Ordinance accepting the proposals of Congress and the framing and adoption of the Constitution, the Territory of Indiana had fully complied with all the requirements imposed upon her by the Enabling Act. Three things were necessary to procure her full admission to the Union and to enable her to participate fully in all the functions exercised by the other states. The first of these was a formal admission to the Union by act of Congress; the second was the admission of her senators and representatives to their respective houses; and, since the year 1816 was a presidential year, the third was the recognition of her electors. William Hendricks, the representative to the Lower House, encountered no opposition. He was sworn into office on December 2, 1816, the day on which Congress convened. The resolution prescribing the manner of electing senators was adopted by the General Assembly of the State on November 8, 1816 (Laws, 1st Session, 1816, 249), and the election of James Noble and Waller Taylor took place

the same day. (House Journal, 1st Session, 1816, 16.) On December 2, the President of the Senate communicated to that body the credentials of Senators-elect Noble and Taylor, which were referred to a select committee for consideration. On December 12, Noble and Taylor took the oath of office and were admitted to seats in the Senate.

The attempt to permit the Indiana electors to participate in the election of president and vice-president encountered considerable opposition. On November 13, 1816, the General Assembly of Indiana adopted a resolution prescribing the method of selecting presidential electors. (Laws, 1st Session, 1816, 251); and three electors were chosen on that day by a joint ballot of the two Houses. (House Journal, 1st Session, 1816, 23.) On February 12, 1817, the day designated by the constitution for counting the electoral vote, the Senators entered the Chamber of the House of Representatives for the purpose of counting the electoral vote. The seals of the votes were broken and the votes of all the states except Indiana were read and entered on the Journals of the two Houses. When the vote of Indiana was read, the proceedings were interrupted by Mr. John W. Taylor of New York, who arose to protest against the counting of the vote of Indiana for president and vice-president. Since the consideration of this question was regarded as unconstitutional in the joint meeting, it was unanimously agreed that the Senate should withdraw until the House had determined the matter to its satisfaction. In the course of the discussion in the House, Mr. Taylor, who was practically unsupported in his contention, advanced the argument that since the electors of Indiana had been chosen (November 13, 1816) before Indiana was declared to be formally admitted to the Union (December 11, 1816), its electoral vote should not be counted. Mr. Taylor admitted, however, that he did not know what would be the proper course to pursue. The representatives who took issue with Mr. Taylor, including Mr. John C. Calhoun, considered that the question was already settled, inasmuch as the representative (December 2, 1816), and both senators (December 12, 1816), had already been admitted to all the privileges of the other members of their respective Houses; that after the formal admission of the representatives of a state it was too late to question her right to participate in the election of president and vice-president; that "from the moment the constitution of the state was assented to, she was entitled to all the privileges of an independent member of the Union;" and that the votes for electors had been given by the state assembly after the Territory had fully performed the condition required of it to become an independent state. During the progress of the discussion two joint resolutions were before the House. The adverse resolution, proposed by Mr. Taylor, was as follows:

"That the votes of Indiana, having been given previous to her admission into the Union, were illegal, and ought not to be received."

The resolution extending to the Indiana electors the right to participate in the election was proposed by Mr. Solomon P. Sharp of Kentucky, and was as follows:

"That the votes for Electors of the State of Indiana, for President and Vice-President of the United States were properly and legally given, and ought to be counted."

Both resolutions were indefinitely postponed, the vote being "almost unanimous." Apparently the Senate had given the matter no consideration.



Later the same day the count of the electoral vote was continued and concluded and Indiana's three electoral votes were counted for James Monroe and Daniel D. Tompkins. (Annals, 14th Congress, 2d Session, 943-950.)

Meantime, on December 2, 1816, on motion of Mr. Jeremiah Morrow of Ohio, a resolution was adopted by the Senate providing for the appointment of a committee "to inquire whether any, and if any, what, legislative measures may be necessary for admitting the State of Indiana into the Union, or for extending to that State the laws of the United States." The committee appointed consisted of Jeremiah Morrow of Ohio, David Daggett of Connecticut and James Barbour of Virginia. On December 4, 1816, this committee reported the following resolution.

[*Annals, 14th Congress, 2d Session, 18.*]

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Indiana, having formed to themselves a constitution and State government, conformable to the Constitution and laws of the United States, and to the principles of the articles of compact between the original States, and the people and States to be formed in the Territory Northwest of the river Ohio, passed on the 13th day of July, 1787, the said State shall be, and is hereby declared to be, one of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.*

The resolution was not entirely satisfactory and on the following day, December 5, on motion of Mr. Morrow, the chairman of the select committee, the resolution was recommitted to that committee for further consideration. On December 6, the committee reported the resolution in a somewhat different form. The resolution passed the Senate the same day and was adopted by the Senate on December 9 without a dissenting vote.

[*Annals, 14th. Congress, 2d. Session, 1348.*]

WHEREAS, in pursuance of an act of Congress, passed on the nineteenth day of April, one thousand eight hundred and sixteen, entitled "An act to enable the people of the Indiana Territory to form a constitution and State government, and for the admission of that State into the Union," the people of the said Territory did, on the twenty-ninth day of June, in the present year, by a convention called for that purpose, form for themselves a constitution and State government, which constitution and State government, so formed, is republican, and in conformity with the principles of the articles of compact between the original States and the people and States in the Territory Northwest of the River Ohio,

passed on the thirteenth day of July, one thousand seven hundred and eighty-seven:

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the State of Indiana shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States, in all respects whatever.

Approved, December 11, 1816.

#### 57. Execution of Federal Laws in Indiana (March 3, 1817).

Besides formally admitting Indiana to the Union, it was necessary, as was anticipated in Mr. Morrow's resolution of December 2, 1816, to provide "for extending to that State the laws of the United States." Accordingly, a bill to provide for the execution of the laws in the State of Indiana was reported to the Senate by the Judiciary Committee on January 2, 1817; the bill passed the Senate on January 31 and the House on March 1, and was approved on March 3.

[*Annals, 14th Congress, 2d Session, 1837.*]

AN ACT to provide for the due execution of the laws of the United States within the State of Indiana.

*Be it enacted, etc.,* That all the laws of the United States, which are not locally inapplicable, shall have the same force and effect within the said State of Indiana as elsewhere within the United States.

Sec. 2. *And be it further enacted,* That the said State shall be one district, and be called the Indiana District; and a district court shall be held therein, to consist of one judge, who shall reside in the said district, and be called a district judge. He shall hold, at the seat of government of the said State, two sessions annually, on the first Mondays in May and November, and he shall, in all things, have and exercise the same jurisdiction and powers which were, by law, given to the judge of the Kentucky district, under an act, entitled "An act to establish the judicial courts of the United States." He shall appoint a clerk for the said district who shall reside and keep the records of the court at the place of holding the same; and shall receive, for the services performed by him, the same fees to which the clerk of the Kentucky district is entitled for similar services.

Sec. 3. *And be it further enacted,* That there shall be allowed to the judge of the said district court the annual compensation of one thousand dollars, to commence from the date of his appoint-

ment, to be paid quarter yearly at the Treasury of the United States.

Sec. 4. *And be it further enacted,* That there shall be appointed in the said district a person learned in the law, to act as attorney for the United States, who shall, in addition to his stated fees, be paid by the United States two hundred dollars, as a full compensation for all extra services.

Sec. 5. *And be it further enacted,* That a marshal shall be appointed for said district, who shall perform the same duties; be subject to the same regulations and penalties, and be entitled to the same fees, as are prescribed to marshals in other districts; and shall moreover, be entitled to the sum of two hundred dollars annually, as a compensation for all extra services.

Approved, March 3, 1817.





Amendment of Constitution  
of 1816





## PART III.

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### AMENDMENT OF THE CONSTITUTION OF 1816.

The documents constituting Part III illustrate the attempts which were made to amend the Constitution of 1816 and to call a convention to frame a new constitution. The period covered extends from 1816 to 1851, when the present Constitution became operative. The outstanding constitutional events of this period were: (1) the submission to a referendum vote of the questions of substituting viva voce voting for voting by ballot, and of removing the State capitol from Corydon prior to the year 1825; (2) the attempts to secure a constitutional convention in 1823, 1828, 1840, 1846 and 1849; (3) the unsuccessful attempts to draft and submit separate amendments to the electors; and (4) the proposal to constitute the General Assembly a convention to draft separate amendments to the Constitution. There were no court decisions of significance. Perhaps the only one which deserves mention is *State v. Lasselle*, 1 Indiana 60-61, decided at the July term of 1820, in which the court held that slavery was entirely prohibited within the State by the express words of the constitution. The question of substituting voting by ballot for viva voce voting was submitted to the electors at the general election of August 6, 1821. The returns received from 15 out of 39 counties disclosed a slight majority in favor of retaining the method of voting by ballot. An attempt at the succeeding session of 1821-1822 to change the method of voting was unsuccessful and the constitution on this point remained unaltered. The question of calling a constitutional convention was submitted to the voters the first time at the general election of August 4, 1823. There were 2,987 votes cast in favor of calling a constitutional convention and 13,831 opposed. On August 4, 1828, the question of calling a constitutional convention was submitted a second time and was defeated by a vote of 18,633 to 10,092. On August 3, 1840, the question was submitted a third time and was defeated by a vote of 61,721 to 12,277. On August 3, 1846, the question was submitted a fourth time and was approved by a vote of 32,468 to 27,123. Since the total vote cast on this proposition was less than a major

ity of the total vote of the State, the General Assembly declined to provide for the election of delegates to a constitutional convention at the succeeding session of 1846-1847. Finally, the question was submitted a fifth time on August 6, 1849, and 81,500 votes were cast in favor of a convention and 57,418 opposed. At the succeeding session of 1849-1850, the General Assembly provided for the election of delegates and the convention assembled on October 7, 1850.

**58. Harrison County Bond (January 3, 1817).**

[First Session, 1816-17. Jonathan Jennings, Governor, Democratic-Republican.]

The following resolution was adopted at the first Session of the General Assembly and relates to a bond of an unspecified character entered into between the citizens of Harrison County and the State, presumably during the sittings of the Convention which framed the Constitution. (See Document No. 70.)

[*Laws, First Session, 252.*]

A JOINT RESOLUTION AUTHORIZING THE COLLECTION OF CERTAIN MONIES DUE FROM THE CITIZENS OF HARRISON COUNTY TO THE STATE OF INDIANA.

WHEREAS it appears to the general assembly, that a bond has been given by certain citizens of the county of Harrison for the payment of one thousand dollars to the state within six months after the state government shall have taken effect, and as the said bond has been lost or mislaid, and a difficulty may therefore arise in the collection of the same, for remedy whereof;

*Be it resolved by the General Assembly of the State of Indiana, That the treasurer of the state be and he is hereby directed to make demand forthwith of any and every of the persons who entered into the bond aforesaid, and receive from the same the sum for which the aforesaid bond was given, according to the true intent and meaning thereof; and on failure to pay the same on or before the first day of May next, the auditor of public accounts for this state, shall thereupon commence a suit or suits in law or chancery for the recovery of the said sum of one thousand dollars, and he is hereby authorized to employ counsel if necessary to the effectual prosecution of such suit or suits.*

Approved, January 3, 1817.

**59. On Locating Seat of Government (December 19, 1817).**

[Second Session, 1817-18. Jonathan Jennings, Governor, Democratic-Republican.]

Among the more unpopular provisions of the constitution of 1816 was the

section providing that "Corydon in Harrison county, shall be the seat of government of the State of Indiana until the year eighteen hundred and twenty-five, and until removed by law." This section represented a compromise; manifestly, its incorporation in the constitution was preceded by a discussion in which the claims of rival sections of the State were presented, and these claims had since been kept alive by popular agitation. The location of the capitol on the extreme southern periphery of the new commonwealth had decided geographical disadvantages, while the spread of population northward perpetually accentuated the prevalent discontent. The General Assembly had full authority under this section to provide by law for the removal of the state capitol after the year 1825; but apparently they were reluctant to exercise that function without specific instructions from the people. Accordingly, the following resolution was introduced in the House of Representatives on December 19, 1817, by James Beggs, and referred to a select committee for consideration; the committee reported in favor of the adoption of this resolution on December 26; on January 9, the House refused to indefinitely postpone the resolution by a vote of 7-21, but it was postponed on January 12 by a vote of 18-10. It is not clear from the wording of this resolution whether an attempt was to be made to secure a relocation of the seat of government prior to 1825, or subsequent thereto, or to ascertain to what place the capitol should be moved after that date, or for some other purpose. The resolution given is not in the form as reported from the committee but must be substantially identical.

[*House Journal, Second Session, 66.*]

*Resolved*, That a committee be appointed to take into consideration the propriety of taking the sense of the people of this state, on that part of the constitution which fixes the seat of government at Corydon until the year 1825, with leave to report by bill or otherwise.

#### 60. Calling a Constitutional Convention (January 5, 1820).

[Fourth Session, 1819-20. Jonathan Jennings, Governor, Democratic-Republican.]

The first attempt to submit the question of calling a constitutional convention to the people was made at the fourth session of the General Assembly, only four years after its adoption. On January 5, 1820, a bill was presented in the Senate by Elisha Harrison "authorizing the qualified electors of this State, at the ensuing general election, to vote for or against the calling of a convention to amend certain parts of the Constitution of this State." This bill was indefinitely postponed on first reading on January 5, by a vote of 8-2. It is not known what amendments were desired or why the proposition was rejected. Only the title to this bill has been preserved.

[*Senate Journal, Fourth Session, 135.*]

A Bill, authorizing the qualified electors of this State, at the ensuing election, to vote for or against the calling a convention, to amend the Constitution in certain parts.



**61. Referendum on Method of Voting—By Ballot or Viva Voce (December 23, 1820).**

[Fifth Session, 1820-21. Jonathan Jennings, Governor, Democratic-Republican.]

Section 2, of Article VI of the Constitution of 1816 provided that "All elections shall be by ballot: Provided, that the general assembly may (if they deem it more expedient) at their session in eighteen hundred and twenty-one, change the mode, so as to vote viva voce; after which time it shall remain unalterable." This section as adopted represented a compromise. The committee reported in favor of viva voce voting. The Convention rejected this recommendation and adopted a provision in favor of voting by ballot, but they devised a way by which the method of voting could be changed in 1821. In order to enable the General Assembly to act more intelligently in carrying out this permissive provision of the Constitution, relative to the method of voting, the following resolution, designed to provide for the submission of the question to a referendum vote, was introduced in the Senate on December 4, 1820 by Elisha Harrison. This resolution passed the Senate on December 8 and the House on December 15.

[*Laws, Fifth Session, 136.*]

A Joint Resolution of the General Assembly of the State of Indiana on the subject of voting.

*Resolved by the General Assembly of the state of Indiana, That the qualified electors of this state be and they are hereby authorized and requested at their August election next to be holden in the several townships and counties in this state when they vote for senators and representatives to the General Assembly to express on the same ticket at the bottom thereof in words at full length whether they are in favor of voting by ballot or in favor of voting viva voce.*

*And be it further resolved, That it shall be the duty of the several inspectors and judges of elections throughout this state to receive, count and make return of the votes thus given to the clerks of the circuit courts in the same manner as they receive, count and make returns of the votes given for senators and representatives to the General Assembly.*

*And be it further resolved, That it shall be the duty of the clerks of the circuit courts throughout this state, when they make out the poll books for the next General Election, to rule two separate columns in said poll books, for the purpose of taking down the votes as aforesaid, and that it shall be the further duty of said clerks of the circuit courts to certify a true statement of the votes thus given, under their hands and seals to the office of the secretary of state on or before the first Monday of December next, and*

that it shall be the duty of the secretary of state to lay the same before the General Assembly.

Approved, December 23, 1820.

**62. Referendum on Method of Voting (December 7, 1820).**

On December 7, 1820, a resolution was introduced in the House by Samuel Milroy and adopted, instructing the Committee on Elections to inquire into the expediency of submitting the question as to the method of voting to a referendum vote. The Senate resolution on the same subject (Document No. 61) was given precedence and the House resolution was not further considered.

*[House Journal, Fifth Session, 78.]*

*Resolved*, That the committee on elections be instructed to enquire into the expediency of providing by law for taking the votes of the electors of this State at the next general election, to ascertain whether they are favorable to a change in the mode of voting, as provided for by the Constitution.

**63. Legislative Attempt to Change Method of Voting (December 14, 1821).**

[Sixth Session, 1821-22. Jonathan Jennings, Governor, Democratic-Republican.]

At the election held in August, 1821, the vote on the proposition of changing the method of voting from ballot to viva voce was fairly evenly divided; official reports of the referendum vote were received from only fifteen of the thirty-nine counties; as a consequence, the General Assembly was undecided as to the proper action to be taken. Moreover, if no action were taken at the session of 1821, the method of voting would thereafter remain unalterable. Although sentiment was divided in both chambers, as a whole the House was in favor of changing the method of voting and the Senate was opposed. On December 6, 1821, by a vote of 8-7, the Senate rejected a resolution introduced by William Graham providing for the appointment of a committee to prepare a bill to change the method of voting to viva voce. On December 12, the House adopted a resolution introduced by John Tipton providing for the appointment of a committee "to draft and report a bill . . . changing the mode of voting from ballot to viva voce." On December 14, the Committee on Elections reported a bill. An attempt to indefinitely postpone the bill was lost by a vote of 10-23, and an attempt to amend to provide "that voters may vote either viva voce or by ballot" by a vote of 15-27. On December 29, after having encountered serious opposition, the bill passed the House by a vote of 23-19, but apparently was never considered by the Senate. Only the title of this bill is given. See Appendix I.

*[House Journal, Sixth Session, 224.]*

A bill to amend the acts regulating elections and to change the mode of voting from balloting to viva voce.

**64. Protest Against Passage of House Bill Changing Method of Voting (December 29, 1821).**

The opposition to the passage of the House bill substituting viva voce for ballot voting was so vehement that the following protest, signed by fifteen members of the House, was filed immediately after its passage, on December 29.

*[House Journal, Sixth Session, 336.]*

The subscribers protest against the passage of an act purporting to change the method of voting from ballot to viva voce:

1st. Because, from the best information obtained, a majority of the qualified electors in the State, who expressed their opinion upon that subject at the last election, decided in favor of ballot, and the report of the chairman of the committee of elections made to this House was partial, containing only 15 counties when there was 39 in the state.

2d. Because such change is calculated to restrain the freedom of elections by subjecting debtors and tenants to the influence of those to whom they are dependent.

Because it leads to personal controversies amongst neighbors, and in the end, is calculated to deter the peaceable citizen from attending the polls.

4th. Because this House has decided, at the present session, that militia elections shall be by ballot, thereby making an unusual, if not an unconstitutional distinction.

5th. Because the constitution provides that the election shall be held on the first Monday of August, and it is believed the votes in many large counties could not all be received in one day.

6th. Because the bill makes no provision for receiving votes in any other way than by ballot, and is, of itself, entirely deficient, and would have no other effect than to distract the public mind with a pretended change, when, in reality, no change would be effected by it, inasmuch as its friends, composing a majority of four of the whole House, refused to have it amended or committed for amendment so as to provide for the change contemplated in the constitution.

**65. Inexpediency of Changing Method of Voting (December 27, 1821).**

On December 27, 1821, when it became apparent that the House bill providing for a change in the method of voting would obtain enough votes to insure its passage, the Senate adopted the following resolution, proposed by



Elisha Harrison, by a vote of 8-7, thus definitely forestalling the action of the House on this proposition.

[*Senate Journal, Sixth Session, 222.*]

WHEREAS the Constitution of this state provides that the election for members to the General Assembly, Governor, Lieutenant Governor, members to Congress &c. shall be holden on the first Monday in August annually; and whereas in consequence of such provision it would be entirely impossible for the votes of each county to be taken at the county seat in one day, and thereby defeat the beneficial consequences which might result from having elections held at one place, in order that candidates for office might have it in their power to refute the falsehoods and misrepresentations which are too frequently circulated for the accomplishment of improper purposes.

Therefore be it resolved by the Senate, That it is inexpedient at this time to change the mode of voting to viva voce, and that the House of Representatives be informed thereof.

**66. Resolution of Condemnation (December 29, 1821).**

The House was greatly displeased at the action of the Senate in adopting the resolution of December 27, 1821, opposing a change in the method of voting. Accordingly, the following resolution was proposed, on December 28 by Zenas Kimberly, criticising the Senate for its action, but was rejected by vote of 16-25.

[*House Journal, Sixth Session, 306.*]

WHEREAS it is provided by the Constitution of this state, Article 6, Sec. 2, that the General Assembly may if they deem it more expedient at their session in the year 1821, change the mode of voting so as to vote viva voce after which time it shall remain unalterable; and whereas the General Assembly, acting upon the clear correct and immutable principles of republicanism, did by their joint resolution of the 23d December, 1820, authorize and request the qualified electors, at their August election to express on their tickets whether they were in favor of voting by ballot or by viva voce, thereby intimating in terms not to be misconceived, that the Representatives then and there to be chosen, should be governed by the vote of their constituents. And whereas the House of Representatives, from the circumstance of their having been elected at a period when that point was particularly submitted to the people, ought to be considered the organ of the popu-

lar will, in preference to the Senate; a majority of whom held their seats without reference to that subject:

*Resolved*, therefore, That the resolution reported from the Senate yesterday on the subject of voting, inasmuch as it can be viewed in no other light than a direct attempt to forstall the decision of the house be and the same is hereby declared to be unparliamentary, and that it be returned to the Senate with a copy of this resolution.

**67. Calling a Constitutional Convention (December 27, 1821).**

On December 27, 1821, the day on which the Senate adopted the resolution expressing its sentiment in opposition to a change in the method of voting, a bill was introduced in the Senate by Elisha Harrison, authorizing the qualified electors to vote on the proposition of calling a constitutional convention. This bill passed the Senate on December 29, the same day on which the resolution authorizing a change in the method of voting, was adopted by the House, by a vote of 9-6. The House was still in bad humor over the adoption of the adverse Senate resolution and a motion was made to reject the Senate bill and carried on December 29, by a vote of 23-13. Only the title of this bill has been preserved.

[*Senate Journal, Sixth Session, 231.*]

A bill authorizing the qualified voters of the different counties at the next August election to vote for or against a convention for the revision of the Constitution of this State.

**68. Calling a Constitutional Convention (January 6, 1823).**

[Seventh Session, 1822-23. William Hendricks, Governor, Democratic-Republican.]

On December 12, 1822, the following resolution, introduced by Elisha Harrison, was adopted by the Senate, providing for the appointment of a committee to enquire into the expediency of submitting the question of calling a constitutional convention to the people. A committee of five members was appointed at once.

[*Senate Journal, Seventh Session, 69.*]

*Resolved*, That a select committee of five members be appointed to enquire into the expediency of a law to authorize the qualified voters throughout the state, at the next August election, to vote for or against calling a convention for the revision of the state constitution; with leave to report by bill or otherwise.

On December 23, a bill, prepared by this committee, was introduced. It passed the Senate on December 29 and the House on January 1, 1823. See Appendix II.

[*Laws, Seventh Session, 121.*]

AN ACT to authorize the qualified voters of this State to vote for or against a Convention for the revision of the Constitution of this State.

Section 1. *Be it enacted by the General Assembly of the state of*

*Indiana*, That the qualified voters of the different townships throughout this state, be and they are hereby authorized, on the first Monday of August next, when they vote for senators and representatives, to express by vote, on the same ticket, at the bottom thereof, whether they are in favor, or against calling a convention, for the revision of the constitution of this state; which vote shall be expressed in one of the following words, to wit: "convention," or "no convention," as the case may be.

Sec. 2. It shall be the duty of the inspectors and judges, in the different townships in each county, to receive, count, and make a true return, of all the votes given, as contemplated in the foregoing section, at the same time, and in the same manner, that they count and make returns of votes given for senators and representatives: and it shall be the duty of the clerk of the circuit court, in each and every county, throughout the state, to seal and forward to the secretary of state, on or before the first Monday of December next, a certificate under his hand and seal, of all the votes taken as aforesaid; and should any of the clerks of the circuit court, fail or neglect to perform the duty enjoined on him by this act, he shall forfeit and pay the sum of one hundred dollars for such neglect, recoverable by presentment or indictment, in any court having competent jurisdiction.

Sec. 3. It shall be the duty of the secretary of state, to lay before the next General Assembly, on the second Monday in December next, all the returns by him received, pursuant to the provisions of this act.

Sec. 4. It shall be the duty of the clerks of the circuit courts, when they make out the poll books, for the general election, to make out and rule two separate columns in the same, for the purpose of tallying the votes taken, as contemplated by this act.

Approved, January 6, 1823.

#### 69. Committee on Unconstitutional Laws (January 13, 1824).

[Eighth Session, 1823-24. William Hendricks, Governor, Democratic-Republican.]

On January 13, 1824, a resolution was introduced in the Senate by James B. Slaughter providing for the appointment of a committee to examine all laws passed since the organization of the State government to ascertain how many laws there were which infringed any provisions of the Constitution. Upon consideration, the resolution was indefinitely postponed on the same day.

[*Senate Journal, Eighth Session, 148.*]

Mr. Slaughter asked and obtained leave to lay before the Senate, a resolution relative to the appointment of a constitutional



committee—the object of which resolution was to appoint a committee who should meet in May next, and consider and report whether any, and if any, what laws may have been passed since the commencement of the state government, infringing the provisions of the constitution of this state.

**70. Bond Guaranteeing Location of State Capitol (January 18, 1825).**

[Ninth Session, 1824-25. William Hendricks, Governor, Democratic-Republican.]

On January 18, 1825, a resolution was introduced in the House by Benjamin V. Beckes designed to secure certain information relative to the arrangement providing for the location of the State capitol at Corydon until the year 1825. The resolution was adopted, but apparently no further action was taken on the proposition. (See Document No. 58.)

[*House Journal, Ninth Session, 77.*]

*Resolved*, That the auditor of public accounts, Secretary of State and Treasurer of State, be requested to attend in the representative hall, on Monday the 24th of this instant, prepared to give to this House, every information they may be in possession of, relative to a bond heretofore given to the Governor, for the use of the state, under an agreement between the members of the convention and the citizens of Corydon, at the formation of the constitution; in pursuance of which, it was agreed, and consequently a provision inserted in said constitution, fixing the seat of government at Corydon, until the year 1825; also, what proceedings have been taken for the collection of said bond; and that accompanying which information, they furnish this House with a copy of said bond.

**71. Impachment by Circuit Courts (January 4, 1826).**

[Tenth Session, 1825-26. James B. Ray, Governor, Adherent of Adams and Clay.]

Section 23 of Article III provided that "The House of Representatives shall have the sole power of impeaching—All impeachments shall be tried by the Senate—". Under this provision of the constitution, the number of impeachment proceedings increased at each session of the General Assembly. These impeachment trials took up the time of the legislature to no profit, required constantly increasing appropriations, while witnesses were required to travel scores of miles to submit their testimony. On January 4, 1826, just at the close of an impeachment trial, a resolution was introduced in the Senate by John Ewing which was designed to provide for the trial of all impeachment cases before the circuit courts. The resolution was adopted but apparently no report was made.

[*Senate Journal, Tenth Session, 137.*]

WHEREAS it has become matter of serious concern and expense,

to have our legislative duties interrupted by the organization of courts of impeachment, and it is believed that jurisdiction of the offences of county officers, may with constitutional authority, and political, and moral, and pecuniary advantages, be transferred to the circuit courts, by indictment, to deprive such officers of their station, and vacate their offices when convicted of capital crimes:

*Resolved*, That the judiciary committee be instructed to enquire into the power and expediency of declaring by law, all county offices to be vacated by a conviction of the incumbent thereof, on a presentment or indictment, before the traverse jury in any circuit court, of a criminal offence that is punishable by confinement in the penitentiary.

**72. Removal of Public Officers; Biennial Sessions of General Assembly; Revision of Constitution by Parts; Constituting Members of General Assembly Constitutional Delegates; and Viva Voce Voting (January 16, 1826).**

The following resolution, introduced in the House on January 16, 1826, by Abel Lomax, enumerates practically all the contemporary recommendations for constitutional amendments, including the removal of public officers, biennial sessions of the legislature, and the method of voting. The plan contemplated in that part of the resolution providing for the revision of the Constitution by parts, and constituting the members of the General Assembly, by special delegation, members of a constitutional convention, was unique. The resolution was rejected by a vote of 15-26.

[*House Journal, Tenth Session, 307.*]

*Resolved*, That a select committee be appointed, with instructions to enquire what amendments, if any ought to be made, to the constitution of the state of Indiana, more particularly to enquire into the expediency of so amending the same as to expunge therefrom, the twenty-third section of the third article, which provides: "that all officers shall be removed from office by impeachment before the General Assembly," and also to expunge therefrom, the third and twenty-fifth sections of the said article, which require "Representatives to be chosen annually, and the General Assembly, to meet in each and every year," that the same may be otherwise provided for by law, so that officers may be removed from office by the verdict of a jury, and judgment of a court, and the General Assembly may meet once every two years.

*Resolved further*, That the said committee enquire whether it is not expedient to provide by law, to amend the constitution in part, without subjecting the whole to revision, by submitting cer-

tain obnoxious parts thereof, to the people for their opinion at the annual election, and whether provision cannot be made, for constituting the members of the General Assembly, by special delegation; members of a convention to carry the will of the people into effect on the subjects submitted to them.

Mr. [David] Hillis moved to amend said resolution as follows: "and that the second section of the sixth article be so amended, that the mode of voting be changed, so as to vote viva voce;" which was adopted.

### 73. Calling a Constitutional Convention (December 14, 1826).

[Eleventh Session, 1826-27. James B. Ray, Governor, Adherent of Adams and Clay.]

The following resolution was submitted to the House on December 14, 1826, by Benjamin V. Beckes, and immediately laid on the table. Later, the resolution seems to have been submitted to the Judiciary Committee who made an adverse report on December 16, in which the House concurred.

[*House Journal, Eleventh Session, 107.*]

*Resolved*, That the committee on the judiciary be instructed to inquire into the expediency of reporting a bill to this House, submitting to the people of this state, the expression of their opinion at the next annual election, the call of a convention to change our constitution, and that said committee act in conjunction with the judiciary committee on the part of the Senate; that the Senate be informed of the adoption of this resolution, and the adoption of a similar one on their part requested.

Mr. [Ezra] Ferris moved to amend said resolution, by striking out so much thereof, as provides for taking the sense of the people, at the next annual election, and to provide that the same be taken at the annual election in 1828.

### 74. Referendum on a Constitutional Convention (January 12, 1827).

On January 12, 1827, a bill was introduced in the Senate by John S. Simonson, authorizing the people to vote for or against a constitutional convention at the August election, 1827. The bill was placed upon its final passage at once and failed by a vote of 6-15.

[*Senate Journal, Eleventh Session, 155.*]

AN ACT to authorize the qualified voters of this State to vote for or against a convention, for the revision of the Constitution of this State, and for or against an amendment to the Constitution of the United States, so as to give the election of President, Vice-President and Senators in Congress directly to the people.

Section 1. *Be it enacted by the General Assembly of the state of Indiana*, That the qualified voters of the different townships through-



out this state, be and they are hereby authorized, on the first Monday of August next, when they vote for senators and representatives, to express by vote on the same ticket at the bottom thereof, whether they are in favor or against calling a convention for the revision of the constitution of this state, and whether they are in favor or against an amendment to the constitution of the United States, so as to give the election of President, Vice President and Senators in Congress directly to the people, which vote shall be expressed in one of the following words, to wit: "convention" or "no convention," "amendment" or "no amendment," as the case may be.

Sec. 2. It shall be the duty of the inspectors and judges in the different townships in each county, to receive, count and make a true return of all the votes given, as contemplated in the foregoing section, at the same time and in the same manner that they count and make returns of votes given for senators and representatives; and it shall be the duty of the clerk of the circuit court, in each and every county throughout the state, to seal and forward to the Secretary of state, on or before the first Monday of December next, a certificate under his hand and seal of all the votes taken as aforesaid; and should any of the clerks of the circuit courts fail, or neglect to perform the duty enjoined on him by this act, he shall forfeit and pay the sum of one hundred dollars for such neglect, recoverable by presentment or indictment in any court having competent jurisdiction.

Sec. 3. It shall be the duty of the Secretary of State to lay before the next General Assembly, on the second Monday in December next, all the returns by him received pursuant to the provisions of this act.

Sec. 4. It shall be the duty of the clerks of the circuit courts, when they make out the poll books for the general election, to make out and rule four separate columns in the same for the purpose of tallying the votes taken as contemplated by this act.

#### **75. Calling a Constitutional Convention (December 13, 1827).**

[Twelfth Session, 1827-28. James B. Ray, Governor, Adherent of Adams and Clay. Prior to 1828, party alignment in Indiana was either non-existent or so uncertain that a political classification of the members of the General Assembly is impossible. The Indianapolis Journal classified the members of the 12th General Assembly as follows: Senate—Adherents of Adams, 17; adherents of Jackson, 4. House—Adherents of Adams, 40; adherents of Jackson, 13; neutral, 4. The *Western Sun* (December 22, 1827) considered this calculation erroneous as "the question was not agitated in any county of the state" and "a majority of the people were decidedly for Jackson."]

On December 13, 1827, the following resolution introduced by Isaac

Howk, an adherent of Adams, instructing the House Committee on Elections to report a bill enabling the electors to vote for or against a constitutional convention, was adopted. Apparently no report was ever submitted.

[*House Journal, Twelfth Session, 95.*]

*Resolved*, That the committee on elections be instructed to report a bill to this house as soon as practicable, providing for the qualified electors of the state, at the next general election, to express by vote, whether they are in favor of calling a convention or not, and also for a return of said votes to the office of the Secretary of State.

#### 76. Calling a Constitutional Convention (January 14, 1828).

The act of January 14, 1828, by which the question of calling a constitutional convention was submitted to the electors was introduced in the Senate on December 18, 1827, by John S. Simonson; it passed the Senate on January 4, 1828, and the House on January 8. See Appendix III.

[*Laws, Twelfth Session, 22.*]

AN ACT to authorize the qualified voters of this State to vote for or against a Convention for a revision of the Constitution of this State.

Section 1. *Be it enacted by the General Assembly of the state of Indiana*, That it shall be and is hereby made the duty of the inspectors and judges of elections, in the several townships within each county in this state, at the annual elections, on the first Monday in August next, to open a poll in pursuance of the eighth article of the constitution of this state, in which shall be entered all the votes given for and against a convention, and the clerks of the circuit courts are hereby required, when they make out poll books for the inspectors of elections, to extend two additional columns for that purpose.

Sec. 2. It is hereby made the duty of the inspectors and judges aforesaid, at the time they announce the name of the voter to their clerks, to put the question in the following words, “are you in favor of calling a convention or not?” and the clerks of said election, shall enter the votes on the poll books, in the proper columns accordingly; and the inspectors and judges shall certify the votes given for and against a convention to the clerks of the circuit courts respectively, in the same way and manner, and under the same restrictions and penalties that votes for state and county officers are required to be certified.

Sec. 3. It shall be the duty of the clerks of the circuit courts

throughout this state, to certify and make returns of all the votes given for and against a convention, to the Secretary of state, in the same way and manner that votes given for Governor and Lieutenant Governor are required by law to be certified, and subject to the same penalties for a neglect of duty. It shall be the duty of the Secretary of State to lay before the next General Assembly, on the second Monday in December next, all the returns by him received, pursuant to the provisions of this act.

Approved, January 14, 1828.

**77. Discontinuance of Annual Sessions of the General Assembly (January 10, 1829).**

[Thirteenth Session, 1828-29. James B. Ray, Governor, Adherent of Adams and Clay. The *Western Sun* (December 20, 1828) says the Presidential question influenced the voting for Speaker at the 13th Session. The candidates for Speaker were Samuel Judah, an adherent of Jackson, (Democrat) and Isaac Howk, an adherent of Adams (Whig). All of Adams' friends but two supported Howk, and one member was absent who favored Judah. According to this calculation, the House must have consisted of 31 Adams adherents and 27 Jackson adherents, so far as known.]

On December 8, 1828, the House Judiciary Committee reported that they had examined the returns on the proposition of calling a constitutional convention and had found a majority against a convention, and therefore they deemed any legislation on the subject inexpedient. However on January 10, 1829, a resolution was introduced in the House by Ezra F. Pabody providing for the discontinuance of annual sessions of the General Assembly. The resolution was laid on the table and not subsequently considered. (See Document No. 78.)

[*House Journal, Thirteenth Session, 387.*]

WHEREAS, An opinion seems to be prevalent among the people of this state, that annual sessions of the legislature, occasion an expenditure of public money, and other inconveniences without corresponding benefits: Therefore,

*Resolved*, That the committee on elections enquire into the propriety and expediency of providing by law, for the people, at their next annual election, to express their assent or dissent to a proposition to amend the twenty-fifth section of the third article of the constitution, so that the legislature shall meet biennially only, except when convened by the executive in cases of emergency.

Mr. [Merritt S.] Craig moved to amend said resolution, so as to make it imperative on said committee to report a bill.

Which motion was carried in the affirmative.

Mr. [William] Trafton moved to amend the same by striking out the word "biennially", and inserting "triennially."



**78. Biennial Sessions of General Assembly; Biennial Election of Senators and Representatives; and Impeachment Trials (January 10, 1829).**

On January 10, 1829, the following resolution was submitted by Newton Claypool for the consideration of the Senate. (See Document No. 77.)

*[Senate Journal, Thirteenth Session, 226.]*

WHEREAS the opinion is prevalent among the people of this state, that the annual meeting of the general assembly is attended with great expense, without a correspondent benefit: therefore,

*Resolved*, That the committee on elections be directed to enquire into the propriety of preparing an amendment to the constitution of this state, to be submitted to the people for their acceptance or rejection at the next annual election, so to amend the constitution, in reference to that particular, as to require the general assembly to meet in future biennially only, subject to be convened by the Governor in cases of emergency.

This resolution was amended to read as follows and was then rejected by a vote of 8-13 on January 10.

*[Senate Journal, Thirteenth Session, 227.]*

WHEREAS the opinion is prevalent among the people of this state, that the annual meeting of the general assembly is attended with great expense, without a correspondent benefit; therefore,

*Resolved*, That the committee on elections be directed to enquire into the propriety of reporting a bill providing for taking a vote of the people at the next annual election, whether they are in favor of calling a convention to change the constitution so that hereafter the Legislature shall meet biennially; and further to amend the constitution so as to elect senators, and representatives biennially, and to authorize the trials of justices of the peace by the circuit court, and the trials of circuit judges in case of impeachment, before the supreme court, as well as all the officers below the grade of supreme judges in the same court.

**79. Bicennial Sessions; Impeachments and Other Amendments (December 19, 1829).**

[Fourteenth Session, 1829-30. James B. Ray, Governor, Adherent of Adams and Clay.]

On December 19, 1829, the following resolution was introduced in the House by Dennis Pennington.

*[House Journal, Fourteenth Session, 157.]*

*Resolved*, That the committee on elections be instructed to

report a bill to this house, to take the sense of the people of this state, at the next general election, whether they wish to call a convention, to so modify the constitution that there shall be one meeting of the general assembly, in two years; and that impeachments of civil officers before the senate, be given to the circuit courts.

On December 21, after two amendments had been accepted, the resolution was adopted in the following form by a vote of 41-17.

*[House Journal, Fourteenth Session, 169.]*

*Resolved*, That the committee on elections be instructed to enquire into the expediency of reporting a bill to this house to take the sense of the people of this state, at the next general election, whether they wish to call a convention, to so modify the constitution of this state, that there shall be one meeting of the general assembly in two years; and that impeachments of civil officers before the Senate, be given to the circuit courts, and to make such other amendments thereto as may be deemed necessary.

On January 22, 1830, the Committee on Elections submitted the following report expressing its opinion that it was inexpedient to legislate upon the constitutional question at that time.

*[House Journal, Fourteenth Session, 421.]*

Mr. [David] Hillis, from the committee on elections, to which was referred a resolution of the house, instructing them to enquire into the expediency of reporting a bill providing for taking the sense of the people at the next general election of this state, whether they wish to call a convention to modify the constitution so as to provide for a biennial meeting of the legislature, &c. reported,

That they have had that subject under consideration, and are of opinion that it is inexpedient to legislate upon it at this time.

#### **80. Impeachments and Biennial Sessions (December 22, 1829).**

The following resolution, designed to secure amendments to the constitution relative to impeachments and biennial sessions without calling a constitutional convention, was submitted for the consideration of the Senate on December 22, 1829, by John M. Lemon, but was immediately rejected by a vote of 9-13. (See Document No. 83.)

*[Senate Journal, Fourteenth Session, 136.]*

WHEREAS, the people are the legitimate distributors of all

power exercised by the government and of those who administer the same; and whereas the people have a right to change, alter, amend or new-model their government, without appointing delegates to meet in convention for that purpose, if any mode can be adopted, by which every citizen may have a voice, so that the will of a majority can be ascertained; therefore,

*Resolved*, That the committee on the judiciary be instructed to report a bill to the senate to give to the people at the next general election the privilege of voting at the polls on the following propositions to change and alter the constitution; first to give to the circuit court the power of trying and determining impeachments in their respective counties upon presentment by grand juries of all inferior officers, such as probate judges, clerks, sheriffs, coroners, recorders, justices of the peace, etc., saving to the accused the right of trial by a petit jury; second, To alter the times of the setting of the legislature so as to require but one session every two years, instead of one every year, unless oftener convened by the executive of the state; and to number the propositions as here numbered, one and two, so that at the election aforesaid the people may vote for the one, and against the other, or for both as they may think proper; and at the next meeting of the legislature, on the second Monday thereof, the President of the senate, and the Speaker of the house of representatives in the presence of both houses shall count the votes for and against each proposed amendment; and if upon counting the votes, there shall appear to be a majority in favor of either or both proposed amendments, the one or both shall then be taken as a part of the constitution.

#### **81. Revision of the Constitution (January 23, 1830).**

On January 23, 1830, a bill was introduced in the House by Dennis Pennington providing for a revision of the Constitution, and was advanced to second reading. An attempt to indefinitely postpone the measure was defeated by a vote of 25-32. The bill was then committed to the committee of the whole, but on January 29, 1830, the consideration of the bill was discontinued. Only the title of the bill has been preserved. At the following session on December 13, 1830, this bill was reported as unfinished business; it was referred to the Committee on Judiciary who recommended indefinite postponement and the measure was laid on the table.

*[House Journal, Fourteenth Session, 435.]*

A bill respecting a revision of the Constitution of this State.



**82. Constituting General Assembly a Constitutional Convention; Impeachments and Biennial Sessions (February 3, 1831).**

[Fifteenth Session, 1830-31. Noah Noble, Governor, Whig. The Lawrenceburg Palladium of September 18, 1830, reported that the Jackson men were in a majority in the Senate and that they also had a majority of six or seven in the House.]

Presented in the Senate on February 3, 1831, by John Ewing and laid on the table by a vote of 11-10.

[*Senate Journal, Fifteenth Session, 435.*]

*Resolved*, That a select committee be appointed with instructions to prepare and present a bill, to give the people the privilege of voting at the next August election upon a proposition that the next General Assembly shall act as a convention to change the constitution, on the following points, namely: impeachment of inferior officers, so that the circuit courts upon presentment or indictment, shall have the right of trial, and to regulate future sessions of the General Assembly, so as to convene only once every two years, unless called by the executive to provide for some case of pressing emergency.

**83. Impeachments; Biennial Sessions; Adoption of Amendments Without a Constitutional Convention (December 27, 1831).**

[Sixteenth Session, 1831-32. Noah Noble, Governor, Whig. The Lawrenceburg Palladium of August 20, 1831, in an incomplete list of the members of the General Assembly, says that 6 of the Senators were adherents of Jackson and 7 were opposed; in the House, 30 members were Jackson men, 39 were opponents and one was disputed. The *Western Sun* of February 4, 1832, quoting from the Indiana Palladium, says that in the House 36 members were friendly to Jackson and 39 were opposed.]

Introduced in the Senate on December 27, 1831, by John M. Lemon, and immediately rejected by a vote of 4-25. (See Document No. 80.)

[*Senate Journal, Sixteenth Session, 146.*]

WHEREAS, the people are the legitimate distributors of all power exercised by the Government, and of those who administer the same, and whereas the people have a right to change, alter, amend or new-model their government without appointing delegates to meet in convention for that purpose, if any mode can be adopted by which every citizen may have a voice so that the will of a majority can be ascertained, therefore,

*Resolved*, That the committee on the judiciary be instructed to report a bill to the Senate, to invite the people, at the next general election, to exercise the privilege of voting at the polls, on the following propositions, to change and alter the constitution:

1st. To give to the circuit courts the power of trying and

determining impeachments in their respective counties, upon presentments by grand jurors of all inferior officers, such as probate judges, clerks, sheriffs, coroners, recorders, justices of the peace, &c. saving to the accused, the right of trial by a petit jury.

2d. To alter the time of the sitting of the legislature, so as to require but one session every two years, instead of one every year, unless oftener convened by the Executive of the State, and to number the propositions as here numbered, ONE and TWO, so that at the election aforesaid, the people may vote for the one, and against the other, or for both, as they may think proper, and at the next meeting of the legislature, on the second Monday thereof, the President of the Senate and the Speaker of the House of Representatives, in the presence of both Houses, shall count the votes for and against each proposed amendment, and if, upon counting the votes, there shall appear to be a majority in favor of either or both proposed amendments, the one or both shall be taken as a part of the constitution.

An attempt to amend this resolution "so that said committee be instructed to inquire into the constitutionality and expediency of making the proposed amendments to the constitution" was rejected by a vote of 12-17. The following wording of the resolution was then proposed but was rejected by a vote of 11-18.

[*Senate Journal, Sixteenth Session, 147.*]

WHEREAS, the people are the legitimate distributors of all power exercised by the Government, and of those who administer the same, and whereas the people have a right to change, alter, amend or new-model their government without appointing delegates to meet in convention for that purpose, if any mode can be adopted by which every citizen may have a voice so that the will of a majority can be ascertained, therefore,

*Resolved*, That the judiciary committee be instructed to inquire into the expediency of providing by law, to take the sense of the people at the next August election, whether they wish to call a convention so to modify the constitution as to have one session of the General Assembly in two years, and transferring cases of impeachments to the circuit courts.

The following proposition, proposed as an amendment to the original resolution, was not adopted.

[*Senate Journal, Sixteenth Session, 148.*]

*Resolved*, That the people express their opinion as to the pro-

priety of so amending the constitution as to give to Indians the rights and privileges of citizens.

**84. Election of Senators, Representatives and Governor; Biennial and Special Sessions; Composition of Circuit Courts; Justices of the Peace Constituted a County Court; Viva Voce Elections; Disposition of Military Exemption Fines; Consolidation of Offices of Clerk and Recorder (January 22, 1833).**

[Seventeenth Session, 1832-33. Noah Noble, Governor, Whig. The Indiana Palladium of September 1, 1832, quoting from the Indiana Democrat, gives the following political classification of the General Assembly: Senate—11 Democrats and 19 Whigs; House—44 Democrats and 29 Whigs.]

Introduced in the House on January 22, 1833, by Carter of Ohio county, and rejected at once without vote.

[*House Journal, Seventeenth Session, 467.*]

*Resolved*, That the committee on the judiciary be instructed to enquire into the expediency of passing a law, at this session of the General Assembly authorizing the qualified voters of the State of Indiana to say by their vote, at the next August election, whether they want a convention called and the Constitution of the State of Indiana revised or not;

And further to enquire into the propriety of recommending to the people the certain sections in the said constitution that ought to be revised, together with the purposed amendments, as follows, to wit:

First, to so amend the third section, in the third article, that the representatives shall be elected once in every two years, on the first Monday in August, by the qualified electors of each county, respectively, and to so amend the fifth section of the third article, that the senators shall be elected for the term of four years, on the first Monday in August, by the qualified voters for representatives;

And to so amend the third section, in the fourth article, that the Governor shall be elected by the qualified electors for representatives, on the first Monday in August, at the places where they shall respectively vote for representatives, and shall hold his office for the term of four years, and until a successor shall be elected and qualified, and shall not be capable of holding it longer than eight years in any term of ten years.

And to so amend the thirteenth section in the fourth article, that the Governor shall, on all extraordinary occasions, convene the General Assembly at the seat of government, or at a different



place, if that shall have become since their last adjournment, dangerous from an enemy, or from contagious disorders; and in case of disagreement between the two Houses, with respect to the time of adjournment, adjourn them to such time as he shall think proper, not beyond the time of their next biennial session;

And to so amend the third and fourth sections in the fifth article, that the circuit courts shall consist of one presiding judge, who shall hold their offices during the term of seven years, if they shall so long behave well;

And to so amend the twelfth section in the fifth article, that a competent number of justices of the peace, shall be elected by the qualified electors in each township in the several counties, and shall continue in office for the term of seven years, if they shall so long behave well, who shall constitute the county court in their several respective counties, to do the county business, whose powers and duties shall, in every respect from time to time, be regulated and defined by law;

And to so amend the second section, in the sixth article, that all elections shall be *viva voce*;

And to so amend the third section in the ninth article, that the money which shall be paid as an equivalent, by persons exempt from militia duty, except in times of war, shall be exclusively applied to the support of schools, in the respective townships, in which the said money is collected, in equal proportions to each school in the township; and also all fines assessed and collected for any breach of the penal laws, shall be applied in equal proportions to each school in the township wherein they shall be assessed;

And to so amend the tenth section, in the eleventh article, that the clerks of their respective circuit courts, in their respective counties, shall, by virtue of their office as clerks of their respective circuit courts, hold the office and perform all the duties of recorder in their respective counties, for the term of time for which they are elected clerk of said courts, and report by bill, joint resolution or otherwise.

**85. Inquiry as to Expediency of Calling Convention (December 23, 1833).**

[Eighteenth Session, 1833-34. Noah Noble, Governor, Whig.]

Adopted by the House on December 23, 1833, as proposed by Frederick Leslie.

[*House Journal, Eighteenth Session, 156.*]

*Resolved*, That the judiciary committee be instructed to enquire

into the expediency of authorizing the qualified electors of the state of Indiana to express on their ballots on the first Monday in August next whether they will or not call a convention to amend the constitution of said state; with leave to report by bill or otherwise.

On December 28, the Judiciary Committee submitted the following unfavorable report. An unsuccessful attempt was made to commit the report to a select committee with instructions to report a bill favorable to the objects of the resolution.

[*House Journal, Eighteenth Session, 207.*]

The committee on the judiciary to which was referred a resolution directing an enquiry into the expediency of the qualified electors of this state to express on their ballots at the next annual election, whether they will or not call a convention, to amend the constitution of this state, have had that subject under consideration, and directed me to report, that it is inexpedient to legislate on that subject at this time.

#### 86. Reconstruction of Militia System (December 16, 1835).

[Twentieth Session, 1835-36. Noah Noble, Governor, Whig. The Indiana Democrat of December 8, 1835, says that a "goodly number" of the officers of both Houses of the General Assembly were "decided friends" of Van Buren. The Speaker of the House was mainly supported in his election by Van Buren men. The vote for speaker was 39 to 33 and 4 scattering.]

Introduced in the House on December 16, 1835, by Ebenezer M. Chamberlain, but apparently never considered.

[*House Journal, Twentieth Session, 63.*]

*Resolved*, That the committee on military affairs be instructed to inquire into the expediency of authorizing by law the calling of a convention of delegates chosen by the people to assemble at Indianapolis in the Representatives' Hall, in the month of July next, or at some other convenient time prior to the next session of the General Assembly, whose duty it shall be to digest and frame a more practical and efficient militia system for the state of Indiana by limiting the requirements of the actual performance of military duty to those citizens now required to do said duty, who are between the ages of eighteen and thirty years, and increasing the number of days duty required of them to perform. And permitting them to form companies of light infantry, riflemen, cavalry, and artillery, or such other description of light companies as a majority of the members of each company in their own dis-

cretion may determine; and by arming them as far as practicable, with the public arms at the disposal of the state, and by such other means as may be devised, and by exempting them during the period they are thus required to perform military duty from the payment of road and poll tax, or any tax the exemption from which shall be an equivalent for the performance of said duty, and by requiring of all military officers, such testimonials of an adequate knowledge of military science, as shall be most appropriate to that military organization, which is most consistent with the peculiar nature of our political institutions, or to adopt any system which may result from their deliberations, either in accordance with these suggestions or otherwise, or to recommend the entire abolition of our present militia system, and the useless task it imposes on the great body of the citizens, so far as would be consistent with constitutional requirements, should the deliberations of said convention lead them to such result.

And that the said convention shall consist of one half the number of members, as near as may be, that the House of Representatives will consist of under the new apportionment, one to be chosen from the same extent of territory which will send two members to this House at the next session of the legislature, and that they receive the same compensation; and that said convention report the result of their deliberations to the next General Assembly for its confirmation, amendment, or rejection.

*Resolved further,* That said committee inquire into the expediency of exempting from military duty, in the mean time, until some salutary reform of the militia system is produced, all persons now liable to said duty, who shall produce to the military court of assessment or of appeals, a certificate from the supervisor of highways of having worked on the road a number of days in addition to the number of days he is otherwise by law required to work, equal to the number of days he may claim to be thus exempt from military duty, with leave to report by bill or otherwise.

#### **87. Calling a Constitutional Convention (December 23, 1835).**

Introduced in the Senate on December 23, 1835, by James Conwell. After consideration by the committee of the whole House, referred to a select committee who reported on February 1, 1836, recommending the postponement of the consideration of the resolution until the first Monday in December, 1836. The report of the committee was concurred in by the Senate. Only the title of the resolution has been preserved.



[*Senate Journal, Twentieth Session, 331.*]

Joint resolution No. 15, authorizing the call of a convention to amend the constitution of the State of Indiana.

**88. Calling a Constitutional Convention (December 21, 1836).**

[Twenty-first Session, 1836-37. David Wallace, Governor, Whig. The Republican Banner of September 7, 1836, gives the political alignment of the General Assembly as follows: Senate—29 adherents of Harrison and 18 adherents of Van Buren. House—55 adherents of Harrison and 44 adherents of Van Buren.]

Introduced in the Senate on December 21, 1836, by Richard W. Thompson; advanced to second reading on January 6, 1837, and laid on the table. Only the title has been preserved.

[*Senate Journal, Twenty-first Session, 197.*]

A joint resolution of the General Assembly of the State of Indiana authorizing a call of a convention of the state of Indiana.

**89. Calling a Constitutional Convention (February 22, 1840).**

[Twenty-fourth Session, 1839-40. David Wallace, Governor, Whig. The political alignment of the members of the 24th session, according to the Semi-Weekly Journal of August 13, 1840, was as follows: Senate—23 Whigs and 22 Democrats. House—39 Whigs and 61 Democrats.]

Introduced in the House on January 23, 1840, as House Bill No. 193, by Jesse Morgan. The bill passed the House on February 4 and the Senate on February 12. See Appendix IV.

[*Laws Twenty-fourth Session, 21.*]

AN ACT to authorize the qualified voters of this State to vote for or against a Convention for a revision of the Constitution of this State.

Section 1. *Be it enacted by the General Assembly of the State of Indiana*, That it shall be, and is hereby made the duty of the inspectors and judges of elections, in the several townships within each county in this State, at the annual election, on the first Monday in August next, to open a poll, in pursuance of the eighth article of the constitution of this State, in which shall be entered all the votes given for and against a convention; and the clerks of the circuit courts are hereby required, when they make out poll books for the inspectors of elections, to extend two additional columns for that purpose. And for the purpose of more expressly calling the attention of the people of the State, to the propriety of voting for or against said proposed convention, it is hereby made the duty of the several sheriffs in this State, to give six weeks' public notice, in a newspaper, if one is published in his county; if not, by written notices, in all the townships in said county, in

writing, calling on the people to vote for or against a convention; and that, in the language of the present constitution, there will not be a convention called unless a majority of all the votes given at such election, shall be in favor of a convention; and urging the people to vote for or against said convention, and setting forth in said notice, that said voting for or against said convention, is in obedience to the constitution of this State, and that the people of their respective counties will not have the right to vote for or against another convention for the space of twelve years.

Sec. 2. It is hereby made the duty of the inspectors and judges aforesaid, at the time they announce the name of the voter to their clerks, to put the question in the following words: "Are you in favor of calling a convention, or not?" And the clerks of said election shall enter the votes on the poll-books, in the proper column, accordingly; and the inspectors and judges shall certify the votes given for and against a convention, to the clerks of the circuit courts respectively, in the same way and manner, and under the same restrictions and penalties that votes for State and county officers are required to be certified.

Sec. 3. It shall be the duty of the clerks of the circuit courts throughout this State, to certify and make returns of all the votes given for or against a convention, to the Secretary of State, in the same way and manner that votes given for Governor and Lieutenant Governor are required by law to be certified, and subject to the same penalties for a neglect of duty. It shall be the duty of the Secretary of State to lay before the next General Assembly, on the second Monday in December next, all the returns by him received, pursuant to the provisions of this act.

Approved, February 22, 1840.

#### 90. Official Election Notice (July 11, 1840).

The following election notice of the election of 1840 on the question of calling a constitutional convention was given to the voters of Knox county.

*[Western Sun and General Advertiser, August 8, 1840.]*

Pursuant to the provisions of an act of the last General Assembly of the State of Indiana entitled "An act to authorize the qualified voters of this State to vote for or against a Convention for a revision of the Constitution of this State," approved February 22, 1840, the qualified voters of Knox county are hereby notified that a poll will be opened in the several townships, by the inspectors and judges of elections, on the first Monday in

August next, for the purpose of receiving their votes for or against a convention to revise the constitution of Indiana; and it is made the duty of said inspectors and judges, at the time they announce the name of the voter, to put to said voter this question—"Are you in favor of calling a Convention, or not?"—And in pursuance also of said law, the people of said county are hereby urged to vote for or against said convention; and they will not have the right to vote for or against another convention for the space of twelve years.

Given under my hand at Vincennes, in said county, this eleventh day of July, 1840. Z. Pulliam, Sheriff.

**91. Inquiry as to Expediency of Calling Constitutional Convention (December 29, 1841).**

[Twenty-sixth Session, 1841-42. Samuel Bigger, Governor, Whig. The Indiana State Sentinel of December 6, 1842, gives the following classification: Senate—22 Democrats, 28 Whigs; House—54 Democrats, 45 Whigs. The Semi-Weekly Journal of August 28, 1841, gives the following: Senate—28 Whigs, 21 Democrats and one vacancy (Daviess county). This member was an opponent of the regular Whig candidate but was himself supposed to be a Whig. House—45 Whigs, 56 Democrats. The same paper of August 9, 1842, gives the membership of the House as 47 Whigs, 53 Democrats. The *Western Sun* of September 4, 1841, classifies the members of the House as 54 Democrats, 46 Whigs.]

Introduced in the House on December 29, 1841, by Chapman of Hancock county, and immediately rejected.

[*House Journal, Twenty-sixth Session, 234.*]

*Resolved*, That the judiciary committee be requested to enquire into the constitutionality and propriety of the legislature at the present session, authorizing by law the calling of a convention to alter or amend the constitution of the State of Indiana.

**92. Inquiry as to Expediency of Calling Constitutional Convention (December 5, 1843).**

[Twenty-eighth Session, 1843-44. James Whitcomb, Governor, Democrat. The Indiana State Sentinel of August 15, 1844, gives the following political classification of the 28th General Assembly: Senate—25 Whigs, 25 Democrats; House—46 Whigs, 54 Democrats. The Indiana State Journal of August 29, 1843, gives the same data.]

Introduced in the Senate on December 5, 1843, by William B. Mitchell, and laid on the table.

[*Senate Journal, Twenty-eighth Session, 9.*]

*Resolved*, That the committee on the judiciary be instructed to enquire into the expediency of reporting a bill providing for the



call of a convention to alter and amend the constitution of the State.

**93. Calling Convention Oftener Than Once in Twelve Years (December 13, 1843).**

Introduced in the House on December 13, 1843, by Joseph Chapman, and rejected.

*[House Journal, Twenty-eighth Session, 110.]*

*Resolved*, That the judiciary committee be requested to enquire into the constitutionality of the legislature of the State of Indiana, calling a convention for the purpose of amending or altering the constitution of the State at any other time than once in every twelve years.

**94. Calling a Constitutional Convention (January 10, 1844).**

Submitted to the House on January 10, 1844, by Joseph Chapman; advanced to second reading and laid on the table on January 11, by a vote of 57-33. Only the title of this bill has been preserved.

*[House Journal, Twenty-eighth Session, 467.]*

A bill to authorize the qualified voters of this State to vote for or against a convention for a revision of the constitution of this State.

**95. Biennial Sessions, Resolution of Inquiry (December 10, 1844).**

[Twenty-ninth Session, 1844-45. James Whitcomb, Governor, Democrat. The Indiana State Journal of November 9, 1844, gives the following political classification of the 29th General Assembly: Senate—25 Whigs, 25 Democrats; House—55 Whigs, 45 Democrats. The Indiana State Sentinel of August 15, 1844, gives: Senate—25 Whigs, 25 Democrats; House—53 Whigs, 46 Democrats.]

Introduced in the House on December 10, 1844, by Thomas L. Sullivan (Whig); referred to a committee of three Whigs for consideration; on December 11, the committee reported a bill and recommended its passage; on December 16, the bill was considered and referred to the Judiciary Committee (4 Whigs and 3 Democrats); on December 23, the Judiciary Committee reported the bill back to the House and recommended its passage. An unsuccessful attempt, lost by a vote of 40-49, was made to recommit the bill to the Judiciary Committee with instructions to amend so as "to submit the isolated question of biennial sessions of the General Assembly, and not interfere with any other constitutional provisions, and that the time of meeting of the General Assembly to be on the 1st of January, and that all elections shall be *viva voce*." (Opposed to amendment, 18 Democrats and 22 Whigs; in favor of amendment, 23 Democrats and 30 Whigs.) A second proposed amendment designed to provide for triennial sessions of the legislature was lost. The bill was then recommitted to the Committee on Judiciary

with instructions to strike out the preamble and that part of the first section which referred to certain provisions set forth in the preamble. Only the title to this bill is preserved.

[*House Journal, Twenty-ninth Session 86.*]

A bill authorizing a convention to be called to alter, change, or amend the constitution.

**96. Biennial Sessions (December 5, 1845).**

[Thirtieth Session, 1845-46. James Whitcomb, Governor, Democrat. Senate—25 Whigs, 25 Democrats; House—45 Whigs, 55 Democrats. (*Indiana State Journal*, August 27, 1845.)]

The following resolution was introduced in the Senate on December 5, 1845, by Ambrose D. Hamrick (Whig) and adopted.

[*Senate Journal, Thirtieth Session, 45.*]

*Resolved*, That a select committee be appointed to enquire into the expediency of calling a convention so to amend the State Constitution as to allow the State legislature to meet but once in two years.

On December 6, a committee of three was appointed (2 Democrats and 1 Whig); on December 12, the committee reported a bill; on December 15, the bill was referred to the Committee on the Judiciary (7 Whigs and 4 Democrats); on December 29, the Committee recommended indefinite postponement; on January 12, 1845, the bill was advanced to engrossment by a vote of 24-22; (in favor of advancement—17 Democrats and 7 Whigs; opposed—6 Democrats and 16 Whigs); on January 13, the bill passed by a vote of 30-14; (19 Democrats and 11 Whigs in favor, and 4 Democrats and 10 Whigs opposed); on January 17, the bill was laid on the table by the House. Only the title of the bill has been preserved.

[*Senate Journal, Thirtieth Session, 76.*]

A bill to authorize the qualified voters of this State to vote for or against the calling of a convention for a revision of the Constitution of this State.

**97. Calling a Constitutional Convention (January 19, 1846).**

The following resolution introduced by Henry Secrist (Democrat), was adopted by the House on December 10, 1845.

[*House Journal, Thirtieth Session, 100.*]

*Resolved*, That the Committee on the Judiciary be instructed to report a bill providing for taking the sense of the qualified voters of this State, at the next annual election, for and against calling a convention for an amendment of the Constitution of this State.

On December 15, the committee reported a bill, which passed the House

on December 18 and the Senate on January 17, 1846, by a vote of 31-14. (19 Democrats and 12 Whigs in favor; 4 Democrats and 10 Whigs opposed.) See Appendix V.

[*Laws, Thirtieth Session, 97.*]

AN ACT to provide for taking the sense of the qualified voters of the State on the calling a Convention, to alter, revise, or amend the Constitution of this State.

Section 1. *Be it enacted by the General Assembly of the State of Indiana*, That it shall be the duty of the inspectors and judges of elections, in the several townships within each county in this State, at the annual election in August next, to open a poll in which shall be entered all the votes given for or against a convention to alter, revise, or amend the Constitution of this State.

Sec. 2. Every qualified voter of this State may, if he choose, at the annual election in August next, vote for or against the calling of a convention for the purpose mentioned in the first section of this act.

Sec. 3. If such voter shall be in favor of a convention, he shall write or print, or partly write and partly print on the same ballot with which he votes for State or county officers, the words, "for a convention;" if against a convention, he shall in the same manner have the words "against a convention," on his ballot as aforesaid.

Sec. 4. It is hereby made the duty of the inspectors and judges of elections, to certify the votes given for and against a convention, to the clerks of the circuit courts, respectively, in the same way and manner, and under the same restrictions and penalties, that votes for State and county officers are certified.

Sec. 5. It shall be the duty of the clerks of the circuit courts, throughout this State, to certify and make returns of all the votes given for and against a convention, to the Secretary of State, in the same way and manner that votes given for Governor and Lieutenant Governor are required by law to be certified: and they shall be subject to the same penalties for a neglect of duty. It shall be the duty of the Secretary of State to lay before the next General Assembly, on the second Monday of December next, all the returns by him received pursuant to the provisions of this act.

Sec. 6. It shall be the duty of the several sheriffs of this State, to give six weeks' public notice, in a newspaper, if one be published in his county; if not, by written notices in each township of his county, that there will be a poll opened for the purposes specified in this act.

Approved, January 19, 1846.



**98. Official Notice of Election (June 22, 1846).**

The following official election notice, given in conformity with the provisions of the act providing for the submission of the question of calling a constitutional convention, was promulgated by the sheriff of Cass county on June 22, 1846.

*[Logansport Telegraph, June 27, 1846.]*

**CONVENTION NOTICE**

The qualified voters of Cass County, Indiana, are notified that at "the annual election in August next" (1846), a poll will be opened in the several townships in said county, to receive votes for or against a convention to alter, revise, or amend the Constitution of this State, at which every voter, if he choose, may vote *for* or *against* the calling of a convention, and if such voter shall be in favor of a convention, he shall write or print on the same ballot with which he votes for State or county officers, the words, "*For a Convention;*" but if against a convention, he shall in the same manner have the words "*Against a Convention,*" on his ballot as aforesaid. It is made the duty of the inspectors and judges of elections to certify the votes given for and against a convention to the clerk of the circuit court in the same way and manner, and under the same restrictions and penalties that votes for State and county officers are certified.

June 22, 1846.

A. Vanness, Sh'ff. C. C.

**99. Marr's Schoolhouse Resolutions (March 14, 1846).**

During the campaign of 1846 very few resolutions were adopted either approving or condemning the proposal to call a constitutional convention. In fact the political literature of the period yields only two. The first of these was adopted by the voters of Perry township, Marion county, at a meeting held at Marr's Schoolhouse on March 14, 1846. These resolutions were in the nature of an address to the voters of the State, and set forth the changes which it was thought wise to make in the constitution. In addition to the address certain resolutions were adopted condemning electioneering, and requesting the General Assembly to regulate the compensation of attorneys and physicians, to increase the jurisdiction of justices of the peace to embrace the sum of \$200 and to reduce the fees of recorders and clerks.

*[Indiana State Sentinel, March 19, 1846.]*

FELLOW CITIZENS—The only proper object of government being the greatest good of the people, whenever it fails of the attainment of that end, there is a right in people, and it is

their duty to reform the same by rectifying the errors or omissions of their old forms.

In view of this truth, and in view of the fact that the people of this State will have to decide at the ensuing election in August, whether our Constitution needs any amendment, we have thought fit to bring before the minds of our fellow citizens for their contemplation, some of the points which we deem worthy of consideration, and which we request may be duly weighed by the voters of this State before they shall have to decide upon the question of "Convention," or "No Convention."

*First.* Would it not be a profitable change in our Constitution to require the legislature to sit once in *two* years, instead of once in each year? We think it would.

*Second.* In order to lessen our county expenses throughout the State, would it not be well to dispense with the *associate* judge system? We are of opinion that such a change is desirable.

*Third.* In order to shorten the time of legislative sessions, ought not the constitution to be so amended as to vest many subjects of local legislation in the county authorities; and to prohibit the General Assembly from passing upon them? We think such amendment is necessary.

*Fourth.* Inasmuch as a great deal of time is consumed and consequent expense incurred, by the General Assembly's constructively usurping judicial power on the subject of divorces, in defiance of the proper division of the powers of sovereignty between the three great departments of government: Is it not necessary that the General Assembly should be expressly prohibited by the constitution from granting divorces? We think there should be such prohibition.

*Fifth.* Would the interest of the people be as well served, and their rights as well secured, by a less numerous legislative body than by the present number? and if so, might not the number of senators be reduced to *twenty-five*, and the number of representatives to *fifty*? withholding from the General Assembly the power of increasing the number. We think such a change is desirable.

*Sixth.* We respectfully suggest another change as respects the qualifications of senators and representatives, to wit: That a representative shall be at least twenty-five years old, and a senator at least thirty years old.

*Seventh.* It is our opinion that the constitution should be so amended as to *restrict* the term of the legislative session to six

weeks, and that the compensation to a legislator shall be fixed by the constitution at two dollars per day.

*Eighth.* That the Governor's term of service be changed from *three* years to *four* years, and to be ineligible until after the intervention of the succeeding term; also, that the senatorial term be four years; which will, unless there should be a called session, require them to serve two sessions, and that the representatives be elected for two years; which, unless there should be a called session, would require them to serve one session only.

*Ninth.* That all fines which by our present constitution go to county seminaries, shall go to common schools, and in such way that each township shall have the benefit of its own fines.

If the happiness of man requires him to form societies and nations, to such associations all men agree that *government* is necessary; it is indispensable in order to guard against numberless evils proceeding from a wrong will or a misguided judgment; like all the other productions of imperfect beings, government itself is imperfect and can only be amended as experience and observation shall be enabled from time to time to point out its imperfections, and the deliberate judgment of the people shall apply itself to rectify them.

In the above named particulars, after much reflection, we are of opinion that the interest of the people requires a change in our constitution; and we make this address to our fellow citizens throughout the State, that their attention may be called to this subject before the time for decision shall arrive. . . .

*Resolved,* That the several counties of this State are hereby respectfully requested to call public meetings; that this address and these resolutions may be taken under their consideration, and that they adopt these, or similar resolutions.

*Resolved,* That the Editors of all the newspapers printed at Indianapolis, and throughout the State, are hereby respectfully requested to publish the foregoing address and resolutions—that all the people of the State may be informed thereof, that there may be concert of action.

#### 100. Washington County Resolution (May, 1846).

The second of these popular resolutions was adopted by the people of Washington county sometime during the month of May, 1846.

[*Indiana State Sentinel*, May 28, 1846.]

*Resolved,* That we approve of the act of the last General



Assembly, in relation to the calling of a convention to amend the constitution of the State, believing that an experience of thirty years, and the radical improvement made in the science of government during that time, as well as the great changes that have occurred since the adoption of the present constitution, in the population, the agricultural, commercial, manufacturing, and mechanical interests of the people, render such a call highly proper and desirable.

**101. Governor Whitcomb's Reference to Election of August 19, 1846 (December 7, 1846).**

[Thirty-first Session, 1846-47. James Whitcomb, Governor, Democrat. Senate—24 Democrats, 26 Whigs; House—45 Democrats, 55 Whigs. (Indiana Journal, August 12, and December 12, 1846; Indiana Sentinel, August 19, 1846.)]

In his annual message to the legislature, delivered on December 7, 1846, Governor James Whitcomb submitted the following explanation of the election of August 19, 1846, on the question of calling a constitutional convention.

*[House Journal, Thirty-first Session, 22.]*

In conformity with the act providing for taking the sense of the qualified voters as to the propriety of calling a convention to alter, revise, or amend the constitution of this State, approved January 19, 1846, a poll was opened at the annual election held in August last, for receiving votes upon that question. The returns, so far as made to the Secretary of State, as required by that act, show that 32,521 votes were cast for, and 27,485 votes were cast against calling a convention. They also show that the aggregate number of votes returned as having been cast upon that question, is less than one-half of the number of voters who attended the polls and voted upon other questions, and that from thirteen counties no returns whatever upon that question have been received.

**102. Favorable Majority Report on House Bill Providing for Summoning Constitutional Convention (January 1, 1847).**

As has been disclosed by the excerpt from Governor Whitcomb's message of December 7, a majority of the electors who voted on the question of calling a convention voted in the affirmative, but the total number of votes cast on that question was less than half the total number of voters who attended the polls and voted on other questions. Since a majority of the electors of the State, as provided by the Constitution, had not voted in favor of a constitutional convention, the question arose whether the General Assembly was competent to provide for the election of delegates to a convention. The

Governor declined to make any recommendation, and opinion in the General Assembly was seriously divided. Although the General Assembly finally adjourned without providing for the call of a convention, several measures were under consideration in both houses. On December 10, 1846, a bill was introduced in the House by Cyrus L. Dunham (Whig), providing for the election of delegates to a constitutional convention. On December 11, the bill was laid on the table. On December 12, that part of the Governor's message relating to a constitutional convention was referred to a select committee of one member from each judicial circuit (6 Democrats and 6 Whigs). On December 28, the House bill was taken from the table and referred to this committee. On January 1, 1847, the select committee submitted a majority and two minority reports. The majority report signed by 1 Whig and 5 Democrats recommending the passage of the bill with amendments was as follows:

[*House Journal, Thirty-first Session, 278.*]

The select committee to whom was referred House bill No. 5, entitled "An act providing for holding a convention to revise and amend the constitution of the State of Indiana," have had the same under consideration, and a majority thereof have instructed me to report the same back to the House with the accompanying amendments, and when so amended, to recommend its passage, and the committee ask to be discharged from the further consideration of the subject:

1. Amend the preamble by striking out all after "majority of," in the tenth line, and insert the following: "the votes given at said election, in reference to calling such convention, was given in favor of calling the same therefor."

2. Amend section 8, in the second line, by inserting before the word "candidates", "candidates or", and by inserting after said word "person."

3. Amend section 12, in the second and third lines, by striking out the words "president thereof", and inserting in lieu thereof, "Governor of the State."

4. Amend section 16, in the second line, by striking out "three" and inserting in lieu thereof "two."

### **103. First Minority Report on House Bill Providing for Summoning Constitutional Convention (January 1, 1847).**

The first minority report on the House bill providing for the election of delegates to a constitutional convention was signed by five Whig members of the committee, and recommended that the bill be indefinitely postponed for the reasons that: (1) a majority of the electors had not voted in favor of a constitutional convention; (2) there were grave doubts whether a convention could be called oftener than once in twelve years; (3) the apathy displayed by

the electorate did not evince any very strong demand to secure amendments in the constitution; and (4) there were likewise serious doubts as to the expediency of calling a convention.

[*House Journal, Thirty-first Session, 278.*]

The undersigned, a minority of the select committee to which was referred the bill providing for calling a convention to alter, revise, or amend the constitution of this State, have had the same under consideration, and respectfully report:

That, after giving to the important matter submitted to their consideration all the attention which their limited time would permit, they regret to find themselves compelled to dissent from the views of the majority of the committee, who have (as they think), unwarrantedly assumed that, in the meagre vote cast, by the people for and against calling a convention at the late gubernatorial election, they have decided, by a constitutional majority in favor of calling a convention to alter, revise, or amend the constitution of the State. The undersigned are at a loss to conceive how any person, under the most latitudinarian system of construction, can find any thing in the letter or spirit of the constitution to justify the conclusions to which the majority of the committee have arrived, and which they seem to think justify their reporting the bill back to the House, with a recommendation in favor of its passage. That the House may fully understand the reasons upon which our opinions are founded, we ask its candid attention to so much of the first section of the eighth article of the constitution as set forth the mode and manner in which that instrument shall be amended. It provides that—

“Every twelfth year after this constitution shall have taken effect (1816), at the general election had for Governor, there shall be a poll opened, in which the qualified electors of the State shall express, by vote, whether they are in favor of calling a convention or not; and if there should be a majority of ALL the votes given at such election in favor of a convention, the Governor shall inform the next General Assembly thereof; whose duty it shall be to provide by law for the election of members to the convention, the number thereof, and the time and place of meeting; and which law shall not be passed unless agreed to by a majority of all the members elected to both branches of the General Assembly”, etc.

Now, nothing appears more conclusive to our minds than that the “majority” contemplated in this provision (to repeat the language of the constitution itself), was “a majority of all the votes



given at such (gubernatorial) election.” The framers of the constitution, as if particularly anxious to guard against the instability and love of change natural to man, immediately after, expressly provide, also, that the law calling a convention shall not pass, unless agreed to by a majority of ALL the members ELECTED to both branches of the General Assembly. Thus it will be seen that “a majority of all the members present (although constituting a quorum) cannot, as in ordinary cases of legislation, pass the bill calling a convention now before the House—a fact, in our opinion, calculated to confirm still more, the conviction that where the word “majority” is used in the preceding part of the section, it means just what it says, viz.: “a majority of all the votes cast at such (gubernatorial) election.”

So far from a majority of all the persons voting at the late election favoring the call of a convention, that the Governor informed the legislature in his late annual message, that only “32,521 votes were cast for, and 27,485 against it.” His excellency further adds (as if to express his doubt, if not his opinion, on the subject), that “the aggregate number of votes returned as having been cast upon that question, is less than one half of the number of voters who attended the polls and voted upon other questions; and that, from thirteen counties, no returns whatever, have been received.” The whole number of polls in the State, according to the same authority, is 126,969, which shows that only a small fraction over one fourth of the legal votes of the people were cast in favor of calling a convention! whilst the voters of thirteen organized counties (judging from the absence of returns from them) do not appear to have known that any such question was at all submitted to their consideration and decision! Have we any evidence that, in these thirteen counties, the sheriffs complied with the requisitions of the sixth section of the act of January last, providing for the vote on calling a convention, or that they had given the required notice of six weeks that such a poll would be opened? or that the judges of the elections opened a poll, in which to “enter all the votes given for and against” the call, as required by the first section of the same law? The act of last session is universally acknowledged to be very vague and inexplicit in many particulars, but especially as to whether the votes given for other officers would be counted for or against a convention where the voter was silent on the subject; and yet, defective as the act is, and difficult as it is to be understood, we have no evidence that its

provisions have been carried out or complied with by the sheriffs and judges of elections in the thirteen counties referred to.

The eighth article, before quoted, further provides that, "if there should be a majority of all the votes given at such election", in favor of a convention, "the Governor shall inform the next General Assembly thereof." The question then is, has such constitutional majority been cast; and if so, has the Governor complied with the imperative injunction of the constitution? Had he believed the vote was such as to authorize the call of a convention, can any one doubt that he would, as in duty bound, have frankly and explicitly said so? Instead, however, of giving his opinion affirmatively, he very significantly says, that "less than one half of the number of voters who attended the polls, and voted upon other questions", voted for and against a convention, and that, from thirteen counties, no returns whatever have been received." Thus, in addition to the plain common sense of the case, the minority think they may fairly quote the high authority of our State executive against the assumption of the majority of your committee, that the constitutional majority of the people, at the late election, have decided in favor of the call of a convention.

If it were necessary, numerous instances could be given, where gentlemen of high legal acquirements refused to vote at the late election either for or against a convention, under the impression that their votes cast for one or the other of the gubernatorial candidates would be counted in the negative against it. That an act so ambiguous should be misunderstood or misconceived by thousands of humble citizens, is not at all to be wondered at. Others again (and this number is far from inconsiderable), believed that the clause of their constitution providing for such vote every twelfth year was not only declaratory of the imperative duty of the General Assembly to do so, at the periods stated, but that it also operated as a limitation of the power of the legislature to do so, at any other period, during the intervening time. The very large class of citizens who honestly entertained these views, and who, therefore, declined to vote under what they conscientiously believed to be an unconstitutional act, may be fairly and legitimately counted with the minority of the votes cast against a convention, and, we have no hesitation in saying, if added to the 27,485 who voted against the expediency of the call, they would form an aggregate greatly outnumbering the meagre majority of 5,036 in its favor. If to this there be added all those who construed the constitutional provision providing for its own amendment,

to mean what it says, that "a majority of all the votes cast at a gubernatorial election" was absolutely and indispensably necessary to authorize the call of a convention, and who, therefore, supposed that all votes given for either of the candidates for Governor, but not cast either for or against a convention, would be counted against the call—the tide of popular sentiment against the conclusions of the majority of the committee, will be still more apparent. Such an array of popular opinion ought to convince the most skeptical that this General Assembly cannot, under the constitution, or without violating its plain and obvious provisions, call a convention to revise, alter, or amend the organic law of our State. To do so, no better warrant than the meagre vote of last August, would, in our humble opinion, be a revolutionary proceeding, calculated to establish a precedent of dangerous tendency, and which, in its ultimate consequences, could not fail to weaken the conservative influence of the constitution as a barrier to protect the weak against the strong—the rights of minorities against the aggressive spirit of superior numbers and physical force. Besides, to assume that the meagre vote of last August decided the question in favor of the call of a convention, proves too much; because, if true, it is equally clear that if only twenty had voted for, and nineteen against the call, instead of the 32,000 being votes cast in its favor, we would then be called upon to witness the singular spectacle of a convention assembled to alter, amend, or change the constitution, at the instance, and to gratify the notions of twenty individuals, out of a population of more than 850,000! Adopt the principle, and there is no stopping place; and it is immaterial whether the aggregate vote for a convention is 20 votes or 30,000—a bare majority of one out of twenty votes would be a complete justification of legislative action preparatory to such an assemblage! The absurdity of construing the constitution in a manner involving such ridiculous results, must, we think, be obvious to all; and should carry conviction to every unprejudiced mind that the able and common sense men who framed our constitution, could not have meant, in the section and article quoted, any thing more nor less, than what the words themselves convey, that a "majority of all the votes given at a gubernatorial election," was absolutely necessary to justify the passage of an act by the General Assembly providing for the call of a convention.

Independent of these considerations, the minority of your committee consider it good policy, in cases where legitimate doubts



exist as to what is the wish of the people, that their servants should not take the responsibility of acting precipitately upon assumed or questionable views, when, by referring such doubts back to the people themselves, they can, without unnecessary or injurious delay, dispel them by another and more direct expression of the popular vote. This mode of dissolving doubts is peculiarly applicable to such a question as that of calling a convention, involving as it does, consequences of such grave import to the liberties, as well as to the pockets of the people. The people are the true sources of all political power, and, in cases of doubt, it is always safe and proper, in a republican government, to consult them. The ablest jurists in the land repudiate the idea that the meagre vote of last August was such a one as the constitution renders necessary as the prelude to legislative action in calling a convention; whilst others again, equally learned in the law, doubt if such a convention can be called oftener than once in twelve years.

There is another view of the case which should (the minority think) have some influence in abating the hot haste of those who assume that the people have spoken affirmatively on this subject. It is this: The very apathy evinced by the small popular vote is a strong argument to prove that the defects in our present constitution are not, in their estimation, sufficiently glaring to arouse the people to go to the polls, and by their votes, prepare the way for their correction and amendment. That it has defects, and that the State has outgrown some of its provisions, few will deny: but it is not left to the "enlightened few", but to the "majority of the qualified voters", to decide whether it is not better to bear the ills we feel, than by attempting to cure them to fly to others (far worse perhaps) which "we know not of." As Jefferson justly says, "prudence dictates that governments long established should not be changed for slight and transient causes"; but, as soon as the citizens of Indiana feel that the evils of their constitution "are no longer sufferable", can any one doubt that an overwhelming majority will rally at the polls in favor of a convention "to provide new guards for their future security"? To doubt this, would be to question their patriotism, and to infer that they were more wedded to the "forms to which they are accustomed" than to the substantial blessings of good government. It is better to act with too much caution than with too much haste in reference to this all important question, and, at all events, not to be over-anxious to force imaginary blessings on an unprepared and unwilling people.

There are among the minority gentlemen entertaining different views as to the necessity and expediency of a convention; and a majority of them, could they bring themselves to the belief that the vote of last August warranted a call, would feel themselves constrained to unite with the majority in recommending the preparatory bill; but, believing it to be purely a question of constitutional fact, they cannot permit mere questions of expediency to cloud their judgments, or to intervene between their duty and their wishes. The question is not whether, in our opinion, a convention is needed and might be rendered beneficial and useful, or not, but whether, at the late gubernatorial election, a constitutional majority was cast in its favor? Unless this is kept steadily in view, instead of deciding in accordance with the letter and spirit of that instrument which we have solemnly sworn to obey and defend, our judgments may be biased by extraneous influences—by our feelings and our passions.

Although the minority differ among themselves as to the constitutional power of the General Assembly to call a convention oftener than once in twelve years, they are unanimously of the opinion that nothing short of “a majority of all the votes given at a gubernatorial election” would authorize or justify the passage of a law providing for the call of a convention to revise, alter, or amend the constitution; and are, therefore, compelled to view the passage of a law providing for such call, as an “usurpation of power, not warranted by the constitution and laws, but in derogation of both.”

They therefore recommend the indefinite postponement of the bill.

**104. Second Minority Report on House Bill Providing for Summoning Constitutional Convention (January 1, 1847).**

The second minority report on the House bill providing for the election of delegates to a constitutional convention was signed by one Democratic member. This report defended the theory that the General Assembly is competent to call a convention at other times than the 12-year periods, but asserted that a convention had not been called for by a majority of all the electors of the State.

*[House Journal, Thirty-first Session, 283.]*

The undersigned, one of the committee to which was referred a resolution of the House in relation to, and a bill providing for, the holding of a convention to amend the constitution of the State, not concurring in the recommendations of the majority of the commit-

tee, and dissenting from the views of the minority, respectfully asks leave to present to the House, in brief, the reasons which have induced him to withhold his sanction from the bill recommended by the majority.

The undersigned in reading the 8th article of the Constitution of the State, and examining the reasons which induced the framers of that instrument to make the provision in said article for the amendment of the Constitution, can come to no other conclusion, than that the intention of those who drafted the Constitution, was to make it obligatory upon the authorities of the State "on every twelfth year" after the adoption of that instrument, to give the citizens of the State an opportunity of expressing at the ballot box, their satisfaction with, or disapprobation of the fundamental law of the State. The language is imperative; "there shall be a poll opened", and the construction must, in the opinion of the undersigned be forced indeed, which can torture this command to the authorities of the State, to open a poll at certain stated times, into a prohibition of the exercise of such a right at any other time.

But the undersigned is prepared to go still farther, and to allow that the Constitution, which makes this imperative injunction prohibitory in its character, or even to suppose such prohibition absolute; and yet falling back upon the great and inalienable rights of the people to say that they, in their sovereign capacity would still have the right at any time "to alter or reform their government in such manner as they think proper" in our federation capacity, only requiring our form of government to be republican. To deny such right is to make the creature, not the handywork of, but greater than, the creator.

So long as the government is administered under the Constitution, and its powers and functions are exercised under and by virtue of the authority thereof, so long is it binding; but to say that the power which created and breathed the breath of life into the body politic, and upon whose will and power it alone exists, has not the right to reclaim and take away the grant and confer them elsewhere, and in another form, is going farther I apprehend, than a sober judgment will warrant.

The undersigned in not giving his sanction to the bill reported by the majority of the committee, is not prevented by any constitutional scruples; but in the opinion of the undersigned, in a matter involving such momentous consequences as a change in the organic law of the State; the people whose interests are to be



affected by it, should a majority of them, in some direct and palpable form give it their sanction, it is not, in the opinion of the undersigned, necessary that they should protest against any alteration. It is enough that they have not asked for a change.

If it is proposed to call the convention under any authority in the present Constitution of the State, we have not such an expressed wish as will comply with the requirement, that "a majority of all the votes given at such election in favor of the convention," and if we propose to call it by virtue of the inherent authority in the people, we are not, in the opinion of the undersigned, clothed with the requisite power to act the clearly expressed wishes of the majority.

While then the undersigned recognizes in the existing constitution, defects, which in his opinion could and ought to be remedied he cannot consistently with a sense of duty, concur with the majority of the committee in their recommendation of the passage of the bill, but must respectfully dissent from their recommendation.

After prolonged consideration the bill was indefinitely postponed on June 6 by a vote of 61-35. (48 Whigs and 13 Democrats in favor of postponement, and 31 Democrats and 4 Whigs opposed.) Only the title of the original bill is preserved.

*[House Journal, Thirty-first Session, 43.]*

AN ACT providing for holding a Convention to revise and amend the Constitution of the State of Indiana.

**105. House Committee's Report on Governor's Message (January 4, 1847).**

On January 4, 1847, the select committee submitted the following report on the Governor's message which was concurred in by the House.

*[House Journal, Thirty-first Session, 317.]*

The select committee to which was referred so much of the Governor's message as relates to the subject of calling a convention to alter, revise, or amend the Constitution of this State, have had the same under consideration and have instructed me to report that, as a bill providing for a convention to alter, revise, or amend said Constitution has already been introduced into this House and by the same referred to said committee, and as the said committee have acted thereon and their action has been reported to this House, that therefore said committee deem further action

by this House on said part of said message unnecessary, and ask to be discharged from the further consideration of the subject.

**106. Senate Committee's Report on Calling Constitutional Convention (December 18, 1846).**

On December 10, 1846, a bill providing for the election of delegates to a constitutional convention was introduced in the Senate by James G. Read (Democrat). On December 11, by a vote of 28-21, the bill was referred to a select committee of one from each judicial circuit in the State (7 Whigs, 5 Democrats); on December 18, the committee submitted the following report which, by a vote of 29-18, was laid on the table and 100 copies ordered printed for the use of the Senate.

*[Senate Journal, Thirty-first Session, 94.]*

The select committee to which was referred Bill No. 3, of the Senate, providing for holding a convention to revise and amend the Constitution of the State of Indiana, have had the same under consideration, and have instructed me to report the same to the Senate, with the following amendments:

In the preamble insert "a majority of all the votes given upon the subject of a convention."

In the fourth section strike out "board of commissioners", and insert "board doing county business."

In the twelfth section strike out "President", and insert "Governor."

On December 30, the bill was taken from the table. An attempt was made to refer the bill to the Judiciary Committee with instructions "to inquire whether a convention to amend the Constitution has been called by the people, at the last August election, under the provisions of the Constitution." This proposition failed by a vote of 24-24. After being twice postponed, the bill was taken up for consideration on January 5, 1847. All of the amendments submitted by the select committee were concurred in. At this juncture the following motion was presented for consideration:

**107. Expediency and Constitutionality of Calling a Convention (January 5, 1847).**

*[Senate Journal, Thirty-first Session, 294.]*

Mr. [John] Beard moved to recommit said bill to a select committee, with instructions to provide for submitting the question of calling a convention to revise and amend the Constitution to a vote of the people at the next August election, inasmuch as serious doubts exist whether such convention was called at the last election; no returns having been received from thirteen counties of any vote whatever on that subject.

The following motion was proposed as a modification of the foregoing and accepted by the original mover:

[*Senate Journal, Thirty-first Session, 294.*]

Amend so that said committee shall inquire into the constitutionality and expediency of the law authorizing the election of delegates to form a new constitution, before a majority of all the votes cast at the election, shall have been given in favor of a convention; and also, to inquire into the probable cost of such convention.

On January 11, by use of the previous question, both of these recommendations were eliminated. The bill was advanced to engrossment by a vote of 24-21. Under suspension of the rules, the bill was passed by a vote of 24-22. (21 Democrats and 3 Whigs in favor, 21 Whigs and 1 Democrat opposed). At this point, the constitutional question arose, whether it was necessary "that a majority of all the members elected to both branches of the General Assembly" should vote on the bill to insure its passage. The President postponed his decision on this question until January 14, when he decided that the bill had passed; an appeal was taken from this decision but was laid over and on January 20 the bill was reported to the House. Just prior to the passage of this bill in the Senate, the following motion was submitted but was immediately eliminated by the use of the previous question.

**108. Calling a Constitutional Convention (January 11, 1847).**

[*Senate Journal, Thirty-first Session, 389.*]

WHEREAS, in pursuance of an act entitled "An act to provide for taking the sense of the qualified voters of the State, on the calling a convention to alter, revise, or amend the Constitution of the State;" and, according to the report of the Secretary of State, only thirty-two thousand four hundred and sixty-eight, of the one hundred and twenty-three thousand eight hundred and seventy-eight votes polled for Governor, voted for the holding of said convention: AND WHEREAS, nearly one-half of those who voted for Governor at the late August election, did not vote for or against a convention as is believed, in consequence of not having understood the form of voting in several counties in the State: Therefore,

*Be it enacted by the General Assembly of the State of Indiana,* That it shall be the duty of the inspectors and judges of elections in the several townships within each county in this State, at the annual election in August next, to open a poll in which shall be entered all the votes given for a convention to alter, revise, or amend the constitution of this State.

Sec. 2. Every qualified voter of this State may, if he choose, at the annual election in August next, vote for the calling of a



convention, for the purpose mentioned in the first section of this act.

Sec. 3. If such voter shall be in favor of a convention, he shall write or print, or partly write and partly print, on the same ballot with which he votes for State or county officers, the words "For a Convention."

Sec. 4. It is hereby made the duty of the inspectors and judges of elections to certify the votes given for a convention to the clerks of the circuit courts, respectively, in the same way and manner, and under the same restrictions and penalties, that votes for State and county officers are certified.

Sec. 5. It shall be the duty of the clerks of the circuit courts throughout this State, to certify and make returns of all the votes given for a convention to the Secretary of State, in the same way and manner that votes given for Governor and Lieutenant Governor are required by law to be certified, and they shall be subject to the same penalties for a neglect of duty. It shall be the duty of the Secretary of State to lay before the next General Assembly, on the second day of December next, all the returns by him received, pursuant to the provisions of this act, for their further consideration and deliberation.

Sec. 6. It shall be the duty of the several sheriffs of this State to give six weeks' public notice in a newspaper, if one be published in his county; if not, by written notices in each township in his county, that there will be a poll opened for the purpose specified in this act.

On January 22, 1847, by a vote of 58-37, the bill was indefinitely postponed in the House. Only the title of the original bill has been preserved.

*[Senate Journal, Thirty-first Session, 36.]*

A bill providing for holding a convention to revise and amend the Constitution of the State of Indiana.

**109. Reviving Law Relative to Calling Constitutional Convention (January 15, 1847).**

Introduced in the Senate on January 15 by Hugh Homer (Whig) and referred to a select committee of three. On January 20, the select committee submitted a report recommending the passage of this resolution. By a vote of 29-20, the resolution was advanced to engrossment for third reading.

*[Senate Journal, Thirty-first Session, 469.]*

A joint resolution on the subject of reviving the law in regard to calling a convention to revise or amend the Constitution of this State.

**110. Obtaining Governor's Opinion on Legal Effect of Vote Given at Election of 1846 (December 28, 1846).**

Introduced in the House on December 28, 1846, by William G. Holland (Whig), and laid on the table by a vote of 52-33.

*[House Journal, Thirty-first Session, 214.]*

WHEREAS, The constitution of the State of Indiana makes it the duty of his Excellency the Governor, when a majority of all the votes given at a general election for Governor, is in favor of a convention to alter the Constitution, to inform the next General Assembly thereof; AND WHEREAS, a vote has been taken on that subject at another time than that designated in the constitution, by virtue of an act of the General Assembly at its last session;

AND WHEREAS, a full vote was not given at said election on that subject, but of the number of votes cast for and against a convention, a majority voted for a convention; therefore,

*Resolved*, That his Excellency the Governor be, and he is hereby respectfully requested forthwith to communicate to this branch of the General Assembly, his opinion whether the vote given under the circumstances will authorize the legislature to provide by law for the election of members of such convention, the number thereof, and the time and place of their meeting.

**111. Evils of Local and Special Legislation (January 11, 1848).**

*[Thirty-second Session, 1847-48. James Whitcomb, Governor, Democrat. Senate—25 Whigs, 25 Democrats; House—54 Whigs, 46 Democrats. (Indiana Weekly Journal, September 7, 1847.)]*

In his annual message to the General Assembly on January 11, 1848, Governor James Whitcomb alluded to the evils and injustice of local and special legislation in the following passage:

*[House Journal, Thirty-second Session, 131.]*

Occasion has been repeatedly taken in my former messages to allude to the great amount of our local or special legislation, the danger of injustice by its means to individual interests, its expense to the treasury and the large portion of time it necessarily occupies to the detriment of that mature and thorough consideration which is due to subjects of a general character. It was also recommended that the necessary powers should by general laws be conferred upon other and more appropriate tribunals, to afford the necessary relief, sought by means of private acts. The subject has been deemed of so grave importance that the constitution of New

York, as lately amended, has a provision against this evil engrafted in it.

I was therefore much gratified to find the attempt to obviate it in part, by the passage, at the last session, of the act to authorize the formation of voluntary associations, approved January 27, 1847. It is hoped that no bill will now be introduced into the legislature for an object the accomplishment of which can be secured by that act. It is not intended to say that the act is not susceptible of amendment; on the contrary, it is believed it might be made to have a wider scope with advantage. But that or any other defect can be easily remedied.

It is earnestly recommended that, as far as practicable, the residue of the broad field of private legislation be occupied by a few general laws.

#### **112. Calling a Constitutional Convention (December 8, 1847).**

Presented to the Senate on December 8, 1847, by James G. Read (Democrat); on December 10, referred to a select committee of one from each congressional district (6 Democrats, 4 Whigs); on January 11, 1848, the committee reported the bill back to the Senate and recommended its passage; on January 21, advanced to engrossment by a vote of 25-23; rejected on January 24 by a vote of 21-24. (21 Democrats in favor of passage, 23 Whigs and one Democrat opposed.) Only the title of the bill has been preserved.

*[Senate Journal, Thirty-second Session, 20.]*

A bill to authorize the voters of this State to vote for, or against a convention for the revision of the Constitution.

#### **113. Calling a Constitutional Convention (January 21, 1848).**

Introduced in the House on January 21, 1848, by David S. Gooding (Whig); January 28 referred to a select committee of five with the following proposed amendments: (1) to strike out that part of the bill which relates to vote by ballot and insert by a viva voce vote. (2) Amend section 3 of the bill to read: "That the inspectors of elections, at the time of voting for county and State officers, shall distinctly put to every voter the question, 'Are you in favor of or against the call of a convention to amend the constitution of the State' ". (3) Supplement section 4 by the addition of the following: "Provided, That nothing herein contained shall authorize the next General Assembly to provide for the calling of a convention, unless a majority of all the votes cast at such election shall be in favor of such convention." On February 8, the select committee reported a substitute bill which was concurred in by the House on February 10 and advanced to engrossment by a vote of 45-39. The bill passed the House on February 15 by a vote of 39-34. (33 Democrats and 6 Whigs in favor of passage, 33 Whigs and 1 Democrat opposed.) Proposed amendments to strike out that portion of the bill which required the voters to vote viva voce and to insert the following as sec-



tion 3 were lost: "Those voting in favor of a convention, shall have written or printed on their ballots, 'convention' and those voting against a convention, shall have written or printed on their ballots, 'no convention.' " The bill as passed by the House was reported to the Senate on February 15 and laid on the table on February 16. Aside from the provisions given above, the only parts of the two bills preserved are the titles which are identical.

[*House Journal, Thirty-second Session, 217 and 472.*]

A bill to provide for taking the sense of the qualified voters of the State on calling a convention to alter, revise, or amend the constitution of this State.

#### 114. Free Soil Platform (August 30, 1848).

The Free Soil State Convention which assembled in Indianapolis on August 30, 1848, adopted the following resolution relative to an amendment of the Constitution.

[*Indiana State Sentinel, February 14, 1849.*]

*Resolved*, That in the opinion of this convention, the Constitution of the State of Indiana should be so amended as to secure the election of all State and county officers by the people.

#### 115. Governor Whitcomb Recommends Calling Constitutional Convention (December 6, 1848).

[Thirty-third Session, 1848-49. Paris C. Dunning, Governor, Democrat. Senate—27 Democrats, 23 Whigs; House—60 Democrats, 40 Whigs. (*Indiana State Sentinel*, December 2, 1848.)]

In his message of December 6, 1848, Governor James Whitcomb<sup>1</sup> recommended the calling of a constitutional convention and enumerated those provisions of the Constitution which in his judgment were in need of amendment.

[*House Journal, Thirty-third Session, 23.*]

It is with unfeigned reluctance that another topic is approached; that of the growing amount of our legislation, and especially of our local and private legislation. Having given my views in regard to this subject in my first inaugural address, having again called attention to it in my annual message in December, 1845, and having repeated it at every session since, it would certainly not be again presented, were it not for a deep conviction of duty, arising from the constant, regular, and rapid growth of the evil. This will be manifest from a comparison of the num-

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1. Governor Whitcomb was elected to the United States Senate on December 27, 1848, and Paris C. Dunning, Lieutenant-Governor, served as Governor during the remainder of the term.

ber of large octavo pages of printed matter occupied by the general laws, as distinguished from those of a merely local or private character, passed at the last five sessions of the legislature. The number of pages of general laws passed at those sessions respectively, commencing with that of 1843-44 are consecutively, 122, 92, 135, 164, and 125, while the pages of a local or private character are, 180, 301, 365, 431 and 636, respectively.

Thus while the amount of our general legislation has for the last five years remained nearly stationary, that of local and private character has, within the same period, advanced more than three hundred and fifty per cent. The bills and joint resolutions, passed at the last session, were over six hundred in number, averaging more than four bills to each member, and more than thirteen for each working day of the session. Besides these were the numerous bills which were introduced, but failed of passage for want of time or other causes. This immense mass of legislation is not only calculated to lengthen the session—to increase the labor of the members—to interfere unjustly with the rights of absent individuals, and to render the law complex and uncertain, but it serves by occupying the mind and distracting the attention, to hazard the passage of dangerous measures of a general character. And if the proper examination of thirteen bills every day for six or seven weeks successively is an unreasonable task for the mind of the legislator, what shall be said of the condition of the Governor who is expected to personally examine all of them before signing; and when the far greater portion of them linger in their passage, until but a few days are left towards the close of the session within which to perform the accumulated labor? But the condition of the citizen, he for whom all this is done, is far worse. He is responsible for his presumed knowledge of the law, and to acquire that knowledge in reality he is compelled to search for it in a wilderness of enactments, and to turn over a new and larger volume every year, fraught with repeal, with change, and with burdensome additions.

For the last five years, the amount of legislation of each session has exceeded that of the previous one, at about the same rate, until the local and general laws passed at the last session have grown into an unwieldy volume of seven hundred and sixty-one pages.

What is the remedy for this growing evil?

But little reflection is required to satisfy us that it will continue to increase until a remedy is applied. In my last annual mes-

sage, occasion was taken to recommend the passage of general laws, under which more appropriate tribunals should be clothed with the necessary powers to afford the relief now sought for by means of most private and local statutes. This is perhaps the only reliable remedy of which the evil is susceptible. It is not intended to deny the expediency of having a diversity of subordinate regulations, varied by the interests, habits, and wishes of different parts of the State. We already have an illustration of that diversity, exhibited in the by-laws and ordinances of different towns and cities, and in the buildings, taxes, and other matters of internal economy, of the different counties. It is only contended that the outlines, or general statutes, under which such diversity may exist, should, like that under which the counties now exercise their discretionary powers, be general and uniform. But while it is very desirable that the legislature should pass such general laws, yet the most thorough conviction is felt that the remedy can only be insured by an amendment of the Constitution, expressly prohibiting the action of the General Assembly on specified subjects of a local and private character, and making it the duty of that department to confer from time to time upon county boards, or other subordinate functionaries, the requisite powers.

The value of the remedy proposed derives confirmation from the fact that a provision of a similar kind was engrafted in the constitution of New York at the time of its amendment in 1846.

If calling a convention to amend the constitution were productive of no other result than furnishing an effectual remedy for this growing evil, it would be abundantly justified. But in addition to that, there is a growing desire that the sessions of the legislature should, as in some other States, be held not oftener than once in every two years, unless specially convened in cases of emergency.

Such a feature, in our State Constitution, would lessen the expenses of legislation nearly one-half, and thus save the expenses of the convention itself, within the first two years; and it would afford a better opportunity to the people of knowing what the laws are, before they are modified or repealed.

It is also to be desired that the constitution should be so amended, as to prohibit the creation of any public debt, except under restrictions as to amount, and object. Years of prosperity may cause the severe lesson we have been taught on this subject to be forgotten, and we cannot too strongly guard against a recurrence of similar improvidence.



Akin to this, in principle and policy, would be an amendment requiring, for the passage of every bill granting money from the treasury, or public property to individuals, a majority of two-thirds, in each house, of all the members elected. In that case, a claimant would still be left in a better position for success before the legislature, than before a jury of his countrymen, where a unanimous verdict is required, besides the burden of sustaining his claim by legal proof.

Such a feature is found in the Constitution of the State, already referred to, and it may be safely affirmed that a claim that will not commend itself to the approval of two-thirds of the representatives of the people should not be allowed.

But although an amendment of the Constitution, on these and some subordinate points, is regarded as highly promotive of the public good, yet I think no convention for that purpose should be called unless first authorized by a direct vote of the people.

The opinion has been expressed that by the eighth article of the present Constitution, the people have no right to vote upon this question, except in every twelfth year thereafter. But it seems now to be generally admitted that that article is directory and not permissive.

In framing the Constitution, it was doubtless borne in mind that the future condition of the State might require corresponding modifications of that instrument. But by securing to the people the privilege of voting upon the question every twelfth year, their power to exercise that right in any other year for which their representatives should make suitable provision, was not taken away. If it was taken away, it was competent, by lengthening the interval for the vote to any imaginable extent, to virtually bind posterity in all future time and prevent any amendment whatever.

The present time is believed to be propitious for moving in this question. We have just left behind us the excitement of a national election. If the vote directed to be taken at the election next August, should be in favor of a convention, the duty would devolve upon the legislature at the next session (that of 1849-50), to provide by law, for the election of delegates at the following general election. The convention might be held during the following autumn, and the people would then have the opportunity of ratifying or rejecting the amendment at the August election, in 1851. Thus the whole question would be disposed of before the presidential election of 1852, which would not be the case, if the initiative should not be taken during the present session. It is

difficult to find a citizen who is not in favor of some amendments to the Constitution, and the only, or nearly the only opposition to the measure, is the fear that others would be made more than counterbalancing the advantage. But in no instance has the constitution of any other State been amended (and the instances have already been many), in which it is not almost universally regarded as an improvement, and it can hardly be supposed that Indiana would be an exception.

It is therefore respectfully recommended that provision be made at the present session for submitting this question, to the decision of the people at the general election, in August next. This question it will be borne in mind, was voted upon at the election of 1846, and the returns made to the Secretary of State showed that 32,521 votes were cast for, and 27,485 votes were cast against it, being a majority of 5,036 in favor of calling a convention. The vote was small, but if it indicated any thing, it was that the popular will favored the measure.

The next legislature, however, declined, and perhaps properly so, to provide a law for calling a convention, and mainly, it is presumed, because the vote was far from being a full one, being less than one half of that cast for officers at the same election, and because no returns whatever were made from thirteen counties. My information since that time leaves a strong conviction on my mind, that a large majority of the people are now in favor of the measure.

#### **116. Calling a Constitutional Convention (December 7, 1848).**

Introduced in the House on December 7, 1848, by Benjamin Wolfe (Democrat); on December 12, the bill was referred to the Judiciary Committee (4 Democrats, 3 Whigs); the following proposed instructions were rejected: "To fix the time of taking the sense of the qualified voters of the State, as to whether they are in favor of calling a convention or not, at the general election to be held for Governor, at the time provided by the first section of the 8th article of the Constitution." On December 19, the Judiciary Committee reported the bill back to the House and recommended its passage. Meantime, on December 15, that part of the Governor's message referring to a constitutional convention was referred to a select committee of one from each congressional district (10 Democrats, 3 Whigs). The House bill was now referred to this same committee. On December 22, the select committee reported this bill back to the House and recommended its passage. On December 27, the bill was read a third time and passed. On December 30, the bill was reported to the Senate and was referred to a committee which had a Senate bill under consideration. Only the title of this bill has been preserved.

[*House Journal, Thirty-third Session, 35.*]

A bill to provide for taking the sense of the qualified voters of the State of Indiana, on the calling of a convention to alter, revise, or amend the Constitution of the State.

**117. Constitutional Amendments (December 14, 1848).**

The following resolution was introduced in the Senate on December 14, 1848 by Alonzo A. Morrison (Democrat). There is no further record of its adventure.

[*Senate Journal, Thirty-third Session, 84.*]

A joint resolution relative to "amendments in the Constitution."

**118. Expediency of Amending the Constitution in Certain Particulars (December 15, 1848).**

The following resolution was introduced in the House on December 15, 1848, by Henry Brady (Democrat), but failed of adoption.

[*House Journal, Thirty-third Session, 97.*]

*Resolved*, That the Committee on the Judiciary be directed to inquire into the expediency of reporting a bill at the earliest practicable period, providing for the calling of a convention to amend the Constitution of this State in the following particulars: 1st. So that the sessions of the General Assembly shall be but once in two years, except when convened by order of the Governor, in cases of emergency. 2d. So that the county seminary funds may go to the common school fund. 3d. And so that the Auditor, Treasurer and Secretary of State, may be elected by the people.

**119. Calling a Constitutional Convention (December 15, 1848).**

On December 15, 1848, a joint resolution relative to amendments to the Constitution and a bill relative to calling a constitutional convention were introduced in the House. On December 16, both the resolution and the bill were referred to the select committee which had the constitutional proposition under consideration at this session. On December 22, when the committee made its report, it recommended that the resolution and bill should be laid on the table.

[*House Journal, Thirty-third Session, 98.*]

A joint resolution relative to amendments to the Constitution.

[*House Journal, Thirty-third Session, 99.*]

A bill providing for taking the sense of the qualified voters of this State,



on calling a convention to alter, revise, or amend the Constitution of this State.

**120. Calling a Constitutional Convention (January 15, 1849).**

Introduced in the Senate on December 15, 1848, by Alonzo A. Morrison (Democrat); referred to a select committee of one from each congressional district (5 Democrats and 5 Whigs) on December 18 with instructions to amend the bill so that "the vote shall be viva voce, instead of by ballot," and to "enquire into and report to the Senate, the probable expense of such convention." On December 30, the committee submitted the following report which was concurred in.

*[Senate Journal, Thirty-third Session, 245.]*

The select committee to which was referred bill of the Senate No. 60, "A bill to provide for taking the sense of the qualified voters of this State on the calling of a convention to alter, revise, and amend the Constitution of this State," have had the same under consideration and a majority of the committee have instructed me to report the same to the Senate with the following amendments, upon the adoption of which they recommend its passage:

Strike out section three and insert the following:

Sec. 3. The inspectors of elections at the several places of voting, shall propose to each voter presenting a ballot the question, "Are you in favor of a convention to amend the constitution?" and those who are in favor of such convention, shall answer in the affirmative; and those who are against such convention, shall answer in the negative; which answers shall be duly recorded by the clerks of such election.

Amend section five (5) as follows:

After the word convention in line five add the following, "And also all the votes that were given at such election."

The committee would further report in accordance with the instructions of the Senate, they have endeavored to ascertain the probable expense of such convention, but having no data upon which to predicate any calculation as to said expense, such as the number of members of the proposed convention, the amount of their per diem allowance, the probable length of their session, and various contingent expenses, they cannot comply with the request of the Senate, and therefore ask to be discharged from the further consideration of the subject.

On motion, Section 3 of the proposed measure was amended to read as follows:

[*Senate Journal, Thirty-third Session, 245.*]

Sec. 3. The inspectors of elections at the several places of voting shall propose to each voter presenting a ballot the question, "Are you in favor of a convention to amend the constitution?" and those who are in favor of such convention, shall answer in the affirmative; and those who are against such convention, shall answer in the negative; which answers shall be duly recorded by the clerks of such election, and the clerk of the board doing county business shall furnish a poll book with the proper columns for that purpose.

On January 2, 1849, the bill passed the Senate by a vote of 34-12. (26 Democrats and 8 Whigs in favor of passage, 11 Whigs and 1 Democrat opposed.) And the House on January 13 by a vote of 80-2 (47 Democrats and 33 Whigs in favor of passage, 2 Whigs opposed). See Appendix VI.

[*Laws, Thirty-third Session, 36.*]

AN ACT to provide for taking the sense of the qualified voters of the State on the calling of a Convention to alter, amend, or revise the Constitution of this State.

Section 1. *Be it enacted by the General Assembly of the State of Indiana*, That it shall be the duty of the inspectors and judges of elections in the several townships within each county in this State at the annual election in August next, to open a poll in which shall be entered all the votes given for or against the calling of a convention to alter, revise, or amend the Constitution of this State.

Sec. 2. Every qualified voter in this State, may, if he choose, at the annual election in August next, vote for or against the calling of a convention, for the purpose mentioned in the first section of this act.

Sec. 3. The inspectors of elections at the several places of voting, shall propose to each voter presenting a ballot the question "are you in favor of a convention to amend the Constitution?" and those who are in favor of such convention shall answer in the affirmative, and those who are against such convention shall answer in the negative, which answers shall be duly recorded by the clerks of such election, and the clerks of the boards doing county business shall furnish a poll-book with proper columns for that purpose.

Sec. 4. It is hereby made the duty of the inspectors and judges of elections to certify the number of votes given for or against a convention to the clerks of the circuit courts respectively, in the

same way and manner, and under the same restrictions and penalties that votes for State and county officers are given and certified.

Sec. 5. It shall be the duty of the clerks of the circuit courts throughout the State to certify and make returns of all the votes given for and against a convention, and also all the votes that were given at such election, to the Secretary of State, in the same way and manner that votes for Governor and Lieutenant Governor are required by law to be certified, and they shall be subject to the same penalties for a neglect of duty. It shall be the duty of the Secretary of State to lay before the next General Assembly on the second Monday of December next all the returns by him received, pursuant to the provisions of this act.

Sec. 6. It shall be the duty of the several sheriffs of this State to give six weeks' notice in a newspaper, if one is published in his county; if not, by written notices in each township of his county, that there will be a poll opened for the purposes specified in this act.

Approved, January 15, 1849.

**121. Official Notice of Election on Constitutional Question (June 27, 1849).**

The official notice of the election to be held in Jefferson county on the question of calling a constitutional convention was issued on June 27, and is as follows:

[*The Madison Weekly Courier*, June 30, 1849.]

PROCLAMATION

Notice is hereby given to the qualified voters of Jefferson County, Indiana, that there will be an election held at the usual place of holding elections in said county—also at North Madison, in Madison township—on Monday, the sixth day of August next, it being the first Monday in August, according to law, for the purpose of electing one Governor and one Lieutenant-Governor for the State of Indiana; and a Congressman for the Second Congressional District of Indiana; three Representatives to the State Legislature for said county; one Sheriff; one Treasurer; one Auditor; one Recorder; one Assessor; and one County Commissioner for the Third district, to fill the vacancy occasioned by the expiration of the term of John E. Gale, Esq.; also for or against the calling of a Convention to alter, amend, and revise the Constitution of In-



diana; also for or against the act of the Legislature of Indiana, 1848-49, to increase and extend the benefits of common schools.

Henry Deputy, Sheriff Jeff. Co.

## 122. Democratic Platform of January 8, 1849.

The Democratic State Convention of 1849 met in Indianapolis on January 8. The bill providing for the submission of the question of calling constitutional convention had already passed the Senate and was under consideration by the House. As the calling of a convention was substantially assured, the Democratic Convention adopted the following resolution relative to that subject.

[*Indiana State Sentinel*, January 11, 1849.]

*Resolved*, That it is expedient that a convention should be held for the purpose of amending the Constitution of the State; and that the following, among other provisions, should be incorporated in the amended Constitution:

*First*, That no public debt shall be contracted, without laying a tax at the same time for paying the interest annually, and for the gradual redemption of the principal: nor until the proposal to contract such debt shall have been submitted for decision to the people, at a General Assembly.

*Second*, That the sessions of the General Assembly shall hereafter be held once in two years only, except in cases of emergency, when the Governor may call a special session.

*Third*, That all elections by the legislature shall be viva voce, instead of by ballot.

## 123. Governor Dunning's Recommendations Relative to a Convention (December 4, 1849).

[Thirty-fourth Session, 1849-50. Joseph A. Wright, Governor, Democrat. Senate—29 Democrats, 21 Whigs; House—58 Democrats, 42 Whigs. (*Indiana State Journal*, December 10, 1849.)]

In his message to the legislature on December 4, 1849, Governor Paris C. Dunning<sup>2</sup> laid before the General Assembly the results of the election on the question of calling a constitutional convention and made certain recommendations relative to the election of delegates.

[*Senate Journal*, *Thirty-fourth Session*, 20.]

In conformity with the provisions of an act, entitled "An act for taking the sense of the qualified voters of the State, on the calling of a convention, to alter, amend, or revise the constitution of

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2. Joseph A. Wright became governor on December 5, 1849.

this State," approved January 15, 1849, a poll was opened at the annual election held in August last, at the places of holding elections in the several counties of this State, and from the returns made to the office of Secretary of State, as required by the act referred to, it appears that there were cast at said election, in favor of calling a convention, 81,500 votes, and against it 57,418 votes. The total vote of the State for Governor is 147,250; the total vote of the State, 149,774 (in this latter statement the vote of Fayette county for Governor is included, the total vote of that county not having been returned), showing a majority of 6,612 votes in favor of a call for a convention, over all the votes cast at that election. The duty of the present General Assembly is plain; it will become necessary to provide by law for districting the State, with a view to the election of delegates to that convention; to determine the number of delegates which shall compose that body, and the time of holding the same. It is most respectfully suggested that, in the discharge of this important duty, the members of the General Assembly should divest themselves of all party predilections, and make such an apportionment as will insure to the people of the State, irrespective of parties, a full and fair representation in that body. This being done, a great initiative step is taken, which will tend as much as any other to predispose the people of the State to adopt the new Constitution which the convention may present to them for their ratification.

Whilst upon this subject it is proper to say, that it will be necessary to levy an additional tax, to defray the expenses of the convention—the amount necessary will depend much upon the length of the present session of the General Assembly. In all probability the organic laws of the State will undergo, in the course of the ensuing year, many material alterations, which will at once suggest the propriety of passing but few general laws, inasmuch as they may become inconsistent or inoperative under the new organization of the State government.

Special legislation is a growing evil which has attracted much attention amongst the masses of the people, and to which much well founded opposition exists in the public mind. Indeed, it has for years past engaged full three-fourths of the time of the General Assembly, to the exclusion (from their due consideration) of many other questions of great importance to the people of the State. It has also occasioned a corresponding proportion of the expenses of our legislation. To avoid this evil, I earnestly recommend to you the enactment of such general laws as will confer up-

on the proper subordinate tribunals of the country, the requisite power to adjust all such questions as are properly and exclusively the subjects of special enactments. If this course is deemed impolitic, I trust that such provision will be made in the contemplated new constitution, as will effectually prevent it.

#### **124. Providing for a Convention (January 18, 1850).**

Introduced in the Senate on December 4, 1849, by Frank P. Randall (Democrat), and referred to a select committee of 10 (6 Democrats and 4 Whigs); reported back from committee on December 14 with several amendments and the recommendation that the bill do pass. In the course of its consideration by the committee and by the Senate, the following amendments were proposed, considered and either adopted or rejected:

Changing the date of the election of delegates from the first Monday in April to the first Monday in August. Adopted.

The committee recommended that the membership of the convention should consist of "two delegates from each Senatorial district of this State, as the same is now districted." On the floor of the Senate the following provisions were suggested: That the membership of the convention should consist of "a number of delegates in each Senatorial district, equal to the number of Senators and Representatives to which each of said districts is entitled in the year 1850, to be elected by said Senatorial districts." Laid on the table. "To provide one instead of two delegates from each Senatorial district." Laid on the table by a vote of 36-12. To "make a fair and equitable apportionment among the respective counties of the State, not to amount in the aggregate to a greater number than one hundred delegates." Laid on the table. "That each county have one delegate, and each county with 1,700 polls, adopting the vote of November, 1848, at the presidential election as a basis, two delegates, and every fraction of 700 over two thousand, three delegates, and every fraction of 700 over three thousand, four delegates." Laid on the table. "That each county shall elect one delegate, and Senatorial districts shall elect one delegate." Laid on the table by a vote of 25-23. "That the representation shall be equal in numbers to the House of Representatives as the same shall be represented in 1850." Laid on the table. "One delegate for each and every one thousand votes, and an additional number for every surplus of 700 votes, taken by Senatorial districts, and based upon the Presidential vote of 1848; total number, 140 delegates." Laid on the table by a vote of 37-13. Provided, "That the district consisting of the counties of Clay, Vigo and Sullivan shall be entitled to three delegates; and the counties of Knox, Daviess, and Martin shall together be entitled to three delegates in said convention." Laid on the table. "Each county, which gave less than 1,500 votes at the Presidential election last past, shall be entitled to one delegate, and each county which, at said election, gave over 1,500 and less than 3,000 votes shall be entitled to two delegates, and each county which gave at said election, over 3,000 votes shall be entitled to three delegates." Laid on the table. "To make a fair and equitable apportionment among the respective counties of the State, not to amount, in the aggregate, to more than 150, nor less than 100 delegates." Rejected. "Provided that he (the delegate) shall have resided within the district one year next preceding said election."



Laid on the table. "Provided, That each district having over 3,500 votes cast at the November election, 1848, be, and the same is entitled to three delegates; and each district having cast at said election over 5,000 votes, shall be entitled to four delegates." Laid on the table by a vote of 25-22. "That each Senatorial district that cast 4,000 votes at the last annual election shall be entitled to one additional member." Laid on the table by a vote of 29-17. "The number of delegates to said convention shall be equal to the number of representatives in the present General Assembly, and shall be elected in the same districts as they are now elected to the House of Representatives: Provided, however, That each county shall have one delegate to said convention." Laid on the table.

"Each county to have one delegate, and each Senatorial district having over 3,000 voters an additional delegate, and if over 5,000, two additional delegates." Laid on the table by a vote of 31-15. The following proposed amendment was laid on the table by a vote of 30-16; "That the delegates to said convention shall be apportioned as follows, to-wit:

Noble.....	1	Posey.....	2
Steuben and Dekalb.....	2	Vanderburgh.....	2
Elkhart.....	2	Warrick.....	1
Lagrange.....	1	Spencer.....	1
Allen.....	2	Perry.....	1
Adams and Wells.....	1	Kosciusko.....	2
Randolph.....	2	Huntington and Whitley.....	2
Jay and Blackford.....	1	Wayne.....	4
Franklin.....	2	Henry.....	2
Dearborn.....	3	Delaware.....	2
Franklin and Dearborn.....	1	Grant.....	1
Madison.....	2	Wabash.....	2
Hancock.....	2	Miami.....	2
Carroll.....	2	Cass.....	2
Clinton.....	2	Howard and Cass.....	1
Tippecanoe.....	3	White and Pulaski.....	1
Tippecanoe and Carroll.....	1	Fulton and Marshall.....	2
Montgomery.....	3	St. Joseph.....	2
Fountain.....	2	Laporte.....	2
Shelby.....	2	Porter and Lake.....	1
Johnson.....	2	Laporte, St. Joseph, Porter and Lake.....	1
Shelby and Johnson.....	1	Fayette.....	2
Morgan.....	2	Union.....	1
Clay.....	1	Ripley.....	2
Vigo.....	2	Rush.....	2
Sullivan.....	2	Decatur.....	2
Vigo and Sullivan.....	1	Rush and Decatur.....	1
Owen.....	2	Boone.....	2
Greene.....	2	Hamilton.....	2
Monroe.....	2	Tipton and Hamilton.....	1
Monroe and Brown.....	1	Parke.....	2
Ohio.....	1	Vermillion.....	2
Switzerland.....	2	Parke, Vermillion, and Putnam... 1	
Clark and Floyd.....	1		

Jackson.....	2	Putnam.....	2
Scott.....	1	Hendricks.....	2
Lawrence.....	2	Marion.....	3
Washington.....	2	Hendricks and Marion.....	1
Orange.....	2	Bartholomew.....	2
Washington and Orange.....	1	Jennings.....	2
Crawford.....	1	Jefferson.....	3
Daviess.....	1	Jefferson and Jennings .....	1
Daviess and Martin.....	1	Harrison.....	2
Pike.....	1	Knox.....	2
Gibson.....	2	Warren.....	1
Gibson and Dubois.....	1	Jasper, Benton and Warren.....	1
Floyd.....	2		

“To district the State giving one delegate to each district; Provided, The whole number of delegates shall not exceed 130.” Rejected by a vote of 9-38.  
 “The said convention shall consist of delegates who shall be elected by the respective counties of this State as follows, to-wit:

The county of Miami shall elect one delegate;  
 The county of Wabash shall elect one delegate;  
 The county of Ripley shall elect two delegates;  
 The county of St. Joseph shall elect one delegate;  
 The counties of Marshall and Fulton shall elect one delegate;  
 The county of Vigo shall elect one delegate;  
 The county of Sullivan shall elect one delegate;  
 The county of Clay shall elect one delegate;  
 The county of Daviess shall elect one delegate;  
 The county of Martin shall elect one delegate;  
 The county of Rush shall elect two delegates;  
 The county of Orange shall elect one delegate;  
 The county of Crawford shall elect one delegate;  
 The county of Vanderburgh shall elect one delegate;  
 The county of Posey shall elect one delegate;  
 The county of Lawrence shall elect two delegates;  
 The county of Elkhart shall elect one delegate;  
 The county of Lagrange shall elect one delegate;  
 The county of Noble shall elect one delegate;  
 The counties of Steuben and DeKalb shall elect one delegate;  
 The county of Franklin shall elect two delegates;  
 The county of Dearborn shall elect two delegates;  
 The county of Randolph shall elect one delegate;  
 The counties of Blackford and Jay shall elect one delegate;  
 The county of Gibson shall elect one delegate;  
 The counties of Pike and Dubois shall elect one delegate;  
 The county of Washington shall elect two delegates;  
 The county of Tippecanoe shall elect two delegates;  
 The county of Allen shall elect one delegate;  
 The counties of Adams and Wells shall elect one delegate;  
 The county of Decatur shall elect two delegates;  
 The county of Green shall elect one delegate;

The county of Owen shall elect one delegate;  
The county of Marion shall elect two delegates;  
The counties of Cass, Pulaski, and Howard shall elect two delegates;  
The county of Hancock shall elect one delegate;  
The county of Madison shall elect one delegate;  
The county of Carroll shall elect one delegate;  
The county of Clinton shall elect one delegate;  
The county of Monroe shall elect one delegate;  
The county of Brown shall elect one delegate;  
The county of Delaware shall elect one delegate;  
The county of Grant shall elect one delegate;  
The county of Kosciusko shall elect one delegate;  
The counties of Huntington and Whitley shall elect one delegate;  
The county of Parke shall elect one delegate;  
The county of Vermillion shall elect one delegate;  
The county of Scott shall elect one delegate;  
The county of Jackson shall elect one delegate;  
The county of Henry shall elect two delegates;  
The county of Boone shall elect one delegate;  
The counties of Hamilton and Tipton shall elect one delegate;  
The county of Warrick shall elect one delegate;  
The counties of Perry and Spencer shall elect one delegate;  
The county of Putnam shall elect two delegates;  
The county of Johnson shall elect two delegates;  
The county of Hendricks shall elect two delegates;  
The county of Jefferson shall elect two delegates;  
The county of Bartholomew shall elect one delegate;  
The county of Jennings shall elect one delegate;  
The county of Warren shall elect one delegate;  
The counties of Benton, White, and Jasper shall elect one delegate;  
The county of Harrison shall elect two delegates;  
The county of Shelby shall elect two delegates;  
The county of Clark shall elect two delegates;  
The county of Montgomery shall elect two delegates;  
The county of Floyd shall elect two delegates;  
The county of Switzerland shall elect one delegate;  
The county of Ohio shall elect one delegate;  
The county of Wayne shall elect three delegates;  
The county of Knox shall elect two delegates;  
The county of Fountain shall elect two delegates;  
The county of Morgan shall elect two delegates;  
The county of Fayette shall elect one delegate;  
The county of Union shall elect one delegate;  
The county of Laporte shall elect one delegate; and  
The counties of Porter and Lake shall elect one delegate.

And all persons entitled to vote by this act, for delegates, shall be eligible to be elected to a seat in said convention.” Laid on the table by a vote of 28-21. “That the delegates shall be elected by representative districts as apportioned for 1850, each district to be entitled to at least one delegate; districts that polled for President in 1848, 2,000 and less than 3,000, two dele-



gates—3,000, and under 4,000, three delegates—4,000 votes and over, four delegates.” Laid on the table by a vote of 26-22. “The said convention shall consist of a number of delegates equal to the number of organized counties in the State together with the number of Senatorial districts; each county shall elect one delegate, except the counties of Wayne, Benton, and Jasper; the county of Wayne shall elect two delegates; the counties of Benton and Jasper shall elect one delegate jointly, and each Senatorial district, as the same is now districted, shall elect one delegate.” Adopted by a vote of 27-19.

As originally reported, the bill provided that the convention should be held on the first Tuesday of May; the dates suggested were the second Monday in October, the first Monday in October, the second Tuesday in October and the second of November.

On January 3, 1849, section 2 of the bill was amended by unanimous consent by the addition of the following proviso: *Provided*, however, That the legal voters of Hamilton county alone shall elect the Senatorial delegate in the Senatorial district composed of the counties of Hamilton, Boone, and Tipton. Thereupon the bill passed the Senate. In the House, the same contest was waged over the question of representation. The following amendments were proposed: (1) Who shall be apportioned in the same manner that members of the State Senate shall then by law be apportioned, and they shall be chosen in the same method, at the same places and by the same electors, that choose the State Senate. No person shall be eligible to a seat in said convention who is not eligible to a seat in the House of Representatives of the State of Indiana. Laid on the table by a vote of 60-35. (2) Eligible to a seat in the House of Representatives of the General Assembly. Adopted by a vote of 60-36. (3) That said convention shall consist of a number of delegates equal to the whole number of members composing the House of Representatives of this State, who shall be apportioned in the same manner that members of the House of Representatives, shall then be by law apportioned, and they shall be chosen in the same method, and at the same places, and by the same electors that choose the General Assembly, and all persons entitled to vote by this act for delegates, shall be eligible to be elected to a seat in said convention; *Provided*, however, That no office holder under the State Constitution shall hold a seat or office in said convention, and any office holder taking or holding an office or seat in said convention, contrary to law, shall thereby forfeit his office under the State Constitution, and the same is hereby vacated; and it is hereby made the duty of the Governor to cause such vacancy to be filled in the mode and manner now provided by law. Laid on the table by a vote of 69-29. (4) *Provided*, That in addition to that number, there shall be one delegate elected from each county, where two or more counties form a representative district. Laid on the table. (5) *Provided*, however, That where two or more counties form one Representative district, then each county in said district shall be entitled to one delegate and no more. Laid on the table. (6) That each organized county in the State shall be entitled to elect one delegate, and all counties now entitled to two or more members in the House of Representatives at each session of the legislature shall each be entitled to two delegates in said convention. Laid on the table. (7) That the said delegates to said convention shall be elected by representative districts, as appointed for 1850. Districts polling less than 2,000 votes for President in 1848, one delegate; 2,000 and less

than 3,000, two delegates; 3,000 and less than 4,000, three delegates; 4,000 votes and over, four delegates. Laid on the table, by a vote of 58-38. (8) And that the county of Sullivan shall alone elect the Senatorial delegate in the Senatorial district composed of the counties of Sullivan, Vigo, and Clay. Laid on the table. (9) Amend by striking out all of section three after the word "delegates", in the 13th line; also, all of section four, five, and six, and insert: Said election shall be conducted, returns made, and certificates given, by the same officers, at the same time, and in the same manner that elections are held, returns made, and certificates given in elections for members of the Senate and House of Representatives. Rejected. (10) And that the qualified voters of the counties of Vigo and Sullivan, be and they are hereby entitled to elect two delegates each, and no more, upon the basis of the representation in the General Assembly of the State of Indiana, for the years 1849 and 1850. Laid on the table by a vote of 71-20. (11) And provided further, That the counties of Daviess and Martin shall elect one delegate each separately, instead of two delegates jointly, as above contemplated in this section. Adopted. (12) And that the county of Union alone elect the Senatorial delegate in the Senatorial district composed of the counties of Fayette and Union. Rejected. (13) The said committee shall consist of a number of delegates equal to the whole number of members comprising the Senate and House of Representatives of this State, who shall be apportioned in the same manner that members of the General Assembly shall then be by law apportioned, and they shall be chosen in the same method, at the same places, and by the same electors that choose the General Assembly, and the said convention shall judge of the election and qualifications of its own members. Laid on the table. (14) Provided, further, That where four or more counties form one Representative district that such district of counties shall be entitled to at least two delegates in said convention. Laid on the table. (15) Of one delegate from each county, one additional one for each county containing over 1,600 polls, one additional one for each county containing over 2,800 polls, made and appointed according to the polls or votes of each county returned to the Secretary of State, and they shall be chosen in the same method, at the same places, and by the same electors that choose the General Assembly; and all persons entitled to vote by this act for delegates, shall be eligible to be elected to a seat in said convention. Laid on the table. (16) And, provided further, That the counties of Ohio and Switzerland shall be entitled to three delegates, and the county of Dearborn shall be entitled to three delegates, and no more. Laid on the table. (17) Provided, further, That where three or more counties form one Representative district, that then such district of counties shall be entitled to at least two delegates in said convention. Lost. (18) Mr. Carnahan of Posey, moved to refer the bill and amendments to a select committee of two from each congressional district of this State, with instructions so to amend the bill as to reduce the number of delegates to the convention, to one hundred; and that the members of this House be constituted said delegates, with power reserved to each representative to appoint a substitute, provided that he shall not be at liberty to appoint any member of the present Senate, or other office holder, such substitute. Laid on the table. (19) So amend and alter section 2, as that there shall be elected as many delegates as there are members of the House of Representatives, with one additional delegate for each district, composed of more than one county, as ap-

portioned in 1850. The bill passed the House on January 11, 1850, by a vote of 53-38. Two conference committees were appointed to straighten out the differences developed in the two Houses and the report was finally agreed to.

[*Laws, Thirty-fourth Session, 29.*]

AN ACT to provide for the call of a Convention of the people of the State of Indiana, to revise, amend, or alter the Constitution of said State.

WHEREAS, An act was passed by the General Assembly of this State at its last session, to provide for taking the sense of the qualified voters of the State, on the propriety of calling a convention to alter, amend, or revise the Constitution of this State, approved January 15, 1849; AND WHEREAS, A large majority of all the votes given at said election was in favor of holding said convention; AND WHEREAS, It is the duty of the Representatives of the people, promptly, and without delay, to provide for carrying the public will thus expressed into immediate effect: Therefore,

Section 1. *Be it enacted by the General Assembly of the State of Indiana*, That the citizens of this State qualified by law, to vote for members of the General Assembly, shall meet at their respective places of holding elections in the several counties of this State, on the first Monday in August next, and proceed to elect delegates to constitute a convention, for the purpose of considering the Constitution of this State, and making such amendments to, alterations of, and changes in the same, as they may deem proper, which amendments shall afterwards be submitted to a vote of the people of this State to be by them ratified or rejected.

Sec. 2. The said convention shall consist of a number of delegates equal to the whole number of the members composing the Senate and House of Representatives of this State who shall be apportioned in the same manner that members of the General Assembly shall then by law be apportioned, and they shall be chosen in the same method, at the same places, and by the same electors that choose the General Assembly, and all persons entitled to vote by this act for delegates shall be eligible to be elected to a seat in said convention: *Provided, however*, That the legal voters of Hamilton county alone shall elect the Senatorial delegate in the Senatorial district composed of the counties of Hamilton, Boone and Tipton: *And provided further*, That the counties of Daviess and Martin shall elect one delegate each separately, instead of two delegates jointly as above contemplated in this section.

Sec. 3. That said election, when not otherwise provided for by this act, shall in all respects be conducted, and the poll books



kept, in the manner prescribed by law for the election of members of the General Assembly of this State; and the several provisions of the fifth chapter of the first part of the Revised Statutes, and the acts amendatory thereof, regulating the hours and places of holding elections, the qualifications and disabilities of voters, the duties of inspectors, judges, and clerks of elections, the keeping of the ballot boxes, the opening of elections, voting, and challenges, the closing of the polls, the counting the votes, returning and canvassing the same, declaring and certifying who are elected, or who have received the highest number of votes, and all other laws regulating general elections in this State as far as the same are applicable, shall be in force and govern in the said election of delegates, and all inspectors, judges, clerks, sheriffs and other officers, shall perform the same duties at said election, and shall receive the same compensation therefor, and be paid in like manner as they are now directed to be paid by law for similar services at elections for members of the General Assembly of this State.

Sec. 4. The board of county canvassers in each county shall meet on the Wednesday succeeding the said first Monday in August next, and proceed to canvass the votes received in each township for delegates to said convention in the same method that is now required of them by the laws regulating the election of members of the General Assembly of this State, and when any county shall alone constitute a senatorial or representative district said board of canvassers shall in the same manner as now provided by law in regard to the election of Senator or Representative for said county, declare who are duly elected senatorial and representative delegates to said convention, from said county, and the clerk of the circuit court of said county shall, on the same or succeeding day, make out under his hand and official seal, certificates of election for each of said delegates so declared elected as aforesaid, and hand them to the sheriff of said county who shall without delay deliver or cause to be delivered to said delegates elect, and said clerk shall also forthwith transmit to the Secretary of State by mail the names of the persons so declared elected, duly certified under his seal of office.

Sec. 5. When two or more counties shall compose a district for the purpose of electing a Senator or Representative the clerk of the circuit courts in the respective counties constituting said district shall on the day next succeeding the return of said election, make out a certificate of all the votes received by each individual

for Senatorial or Representative delegates to said convention in said county and deliver the same to the sheriff of his county.

Sec. 6. The sheriffs (or their deputies duly appointed) of the several counties constituting said Senatorial or Representative district, shall meet on the Wednesday next following the return day of such election, at the same hour and place, and in the same county now required by the law for them to meet to canvass the vote for Senators or Representative (as the case may be in said district) and proceed to compare the several certificates so delivered to them by said clerks of their respective counties as aforesaid, and after having ascertained who are duly elected Senatorial or Representative delegates to said convention in said district, they shall jointly make out and forward by the hand of one or more of their number to the person or persons by them so declared elected as delegates to said convention, certificates of their election; and said sheriffs shall also deliver to the clerk of the circuit court in the county where said certificates are compared, a statement in writing of the names of the person or persons by them declared duly elected delegates as aforesaid, who shall file the same in his office and immediately transmit by mail a certified copy thereof, attested under his seal of office to the Secretary of this State.

Sec. 7. That all wilfully (wilful), corrupt, and false swearing in taking any of the oaths or affirmations rendered necessary by virtue of this act, at or in relation to said election of delegates, shall be deemed perjury, and shall be punished in the same manner now prescribed by law for the punishment of perjury; and all laws prohibiting and providing penalties for illegal voting at the general elections in this State, and also providing penalties for betting on, and misconduct at elections, and all laws requiring the performance of any duty from any officer in regard to the election of members of the General Assembly of this State, shall be, and is hereby declared in full force; and said officers shall be liable for any neglect of duty to the same penalties now prescribed by law for the neglect of similar duties in respect to the election of members of the General Assembly of this State.

Sec. 8. In case of a contested or disputed election of delegates to said convention, the contesting candidate, or other person contesting said election, shall pursue the same course, and be governed in all things by the same rules and regulations as are now provided by law in cases of contested or disputed elections of Senators or Representatives of the General Assembly of this State.

Sec. 9. The delegates who shall be elected as aforesaid, shall

assemble in convention at the capitol, in the city of Indianapolis, on the first Monday in October next, and organize by electing a president and all other officers necessary. It shall be the duty of the Secretary of the State to attend the said convention on the opening thereof, to call over the lists of districts and counties, receive the credentials of the delegates, and generally to perform the like duties in the organization of the same, that are usually discharged by the officer whose duty it is by law to attend to the organization of the House of Representatives of this State at the commencement of its session; and should the Secretary of the State fail to attend in person or by deputy, by 10 o'clock A.M. on said day, then it shall be the duty of the Auditor of this State to attend for such purpose; and it shall be the duty of the State Librarian immediately after the General Assembly shall adjourn, to prepare the Hall of the House of Representatives for the reception of, and sittings of said convention.

Sec. 10. The said delegates, before entering upon the discharge of their duties, shall each be duly sworn or affirmed to support the constitution of the United States, and also faithfully, and to the best of their respective abilities, perform the duties of their office; which oath or affirmation may be administered to them by any judge of the supreme, or president judge of the circuit courts of this State; and should no such judge be in attendance at the opening of the sitting of said convention, then by any officer of the county of Marion duly authorized by the laws of this State to administer oaths and affirmations.

Sec. 11. The members of said convention shall enjoy the same privileges in going to, attending upon, and returning from said convention, that members elected to and attending on the General Assembly are entitled, by law. Said convention shall be the judge of the elections, returns, and qualifications of its own members; it shall possess the same power to adopt rules, expel a member for disorderly conduct, and punish contempt, that are now exercised by either House of the General Assembly in similar cases. A majority of the members shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and take measures to compel attendance of absent members. And the president, members, and secretaries of the convention shall be allowed the use of the books in the State library, in the same manner and upon the same condition that the members of the General Assembly are allowed the use thereof.

Sec. 12. In case of the death or resignation of any member of



said convention, the Governor of this State shall issue a writ of election, directed to the sheriff or sheriffs of the proper counties, directing a special election to be held to fill such vacancy, in the same manner now prescribed by law for supplying vacancies in the General Assembly of this State. The members of said convention shall receive three dollars per day while actually attending upon the sittings of said convention, and shall be allowed the like compensation for their travel as members of the General Assembly are allowed by law; and their secretaries, officers, and attendants shall be paid the same compensation as the officers of the General Assembly of this State are paid for similar services; which pay, together with the pay of a competent stenographer to report their debates, which stenographer shall be appointed by the Governor for that purpose, with the other expenses of the convention, shall be certified by the president of the convention, and shall be paid by the Treasurer of this State on the warrant of the Auditor of public accounts.

Sec. 13. The Secretary of State, and all other officers in this State shall furnish said convention with all such papers, statements, statistical information, copies of records or public documents in their possession as the said convention may order or require; and it shall be the duty of the proper officer or officers to furnish the members with all such stationary as is usual for the General Assembly while in session, which shall be paid for on the certificate of the president, in like manner as the contingent expenses of the House of Representatives are now paid by law.

Sec. 14. The roll containing the draught of the amended constitution adopted by said convention, and the proceedings of said convention, shall be deposited by the president and secretary thereof in the office of the Secretary of State, who shall file the same, and cause said constitution to be entered of record in his office; and said convention may submit one or more of the amendments which they may propose to the constitution as distinct propositions, to be voted upon by the people separately or together, as to them may seem expedient.

Sec. 15. It shall be the duty of the Secretary of State, so soon as the same is recorded in his office, to deliver to the Governor of this State a certified copy of said amended constitution, who shall, on the meeting of the General Assembly of this State at its next session, lay the same before them; and it shall be the duty of the said General Assembly to pass all laws necessary and proper for submitting the same to the qualified voters for their approval and

rejection; and also for organizing the government under the amended constitution, in case it should be adopted and ratified by such voters.

Sec. 16. It shall be the duty of the Secretary of State to immediately cause three thousand copies of this act, and the appendix hereinafter provided for, to be printed and forthwith forwarded by mail, not less than twenty nor more than thirty copies thereof to the clerk of each of the counties in this State, who shall (cause) the sheriff of the county to deliver one or more of said copies to each inspector of elections in said county, and said clerk shall certify to the sheriff that the delegates are to be elected, and the said sheriff shall give notice of the said election in the same manner now provided by law in regard to the election of members of the General Assembly of this State.

Sec. 17. It shall be the duty of the Secretary of State to prepare and have printed blank forms of the caption of the poll books, and the returns required of the inspectors and judges of elections; the certificates required of the county canvassers, clerks, and sheriffs, and all other forms required by this act, and which may be necessary and proper to carry the same into full effect which shall be added by way of appendix to this act; and it shall be the duty of the clerk in each county to cause a suitable number of blank forms of poll books with proper captions, and forms of the returns required to be made by the inspectors and judges of the election, to be made out, conforming them to those prescribed by the Secretary of State, and deliver them to the sheriff of said county; and said sheriff shall, at least twenty days previous to the election, deliver one or more copies thereof to each inspector of elections in the several townships in the county.

This act to take effect and be in force from and after its passage.

Approved, January 18, 1850.

**125. Providing for a Constitutional Convention (December 4, 1849).**

Introduced in the House on December 4 by Samuel S. Mickle (Democrat), and after consideration laid on the table on January 4, 1850. Only the title has been preserved.

*[House Journal, Thirty-fourth Session, 30.]*

A bill to provide for holding a convention of the people to revise and amend the Constitution of this State.

**126. Providing for a Constitutional Convention (December 5, 1849).**

On December 5, a second bill was introduced in the House by John W.

Spencer (Democrat), relative to the call of a constitutional convention, and on December 6 it was referred to the select committee. Only the title is extant.

[*House Journal, Thirty-fourth Session, 34.*]

A bill to provide for the calling of a convention to revise, amend, or change the Constitution of the State of Indiana.

**127. Compensation of Election Officers (January 10, 1850).**

On January 10, a joint resolution was presented in the Senate by Frank P. Randall (Democrat), relative to certain phases of the constitutional question; it was referred to the Judiciary Committee who reported it back without recommendation; on January 18, the resolution and the following proposed amendment were laid on the table: That for their services said officers shall receive a reasonable compensation, to be allowed by the boards doing county business for their respective counties, and paid out of the county treasury.

[*Senate Journal, Thirty-fourth Session, 533.*]

A joint resolution in relation to convention to alter and amend the Constitution of this State.

**128. Printer to the Convention (January 11, 1850).**

On January 11, 1850, the following resolution was presented by Reid of Union county (Democrat), and advanced to second reading; apparently it was given no further consideration.

[*Senate Journal, Thirty-fourth Session, 551.*]

A joint resolution for the purpose of appointing a printer for the convention.

**129. Loan for the Convention (January 15, 1850).**

On January 15, 1850, the following resolution was presented in the Senate by John S. Buckles (Democrat), relative to a loan to defray the expenses of the convention. It was adopted, but apparently there was no further action.

[*Senate Journal, Thirty-fourth Session, 654.*]

*Resolved*, That the committee on finance be instructed to inquire into the expediency of providing by law for the negotiation of a loan of funds sufficient to defray the expenses of the constitutional convention, to be held in October next, with leave to report by bill or otherwise.



**130. Appropriation for a Convention (January 19, 1850).***[Laws, Thirty-fourth Session, 5.]*

AN ACT making general appropriations for the year 1850.

Section 1. *Be it enacted by the General Assembly of the State of Indiana, . . .*Sec. 2. *Be it further enacted,* That the sum of forty thousand dollars is hereby appropriated to defray the expenses of the convention to new model and amend the Constitution of the State of Indiana.

Sec. 3. . . .

Sec. 4. This act to be in force from and after its passage.

Approved, January 19, 1850.

**131. Providing a Suitable Room for the Sitzings of the Constitutional Convention of 1850 (January 21, 1850).**

By a joint resolution approved January 21, 1850, the Governor, Auditor and Treasurer of State were authorized to procure a suitable room for the sittings of the constitutional convention of 1850. (See Document No. 136.)

*[Laws, Thirty-Fourth Session, 250.]*

A joint resolution authorizing the Officers of State to procure a suitable room for the sittings of the convention.

Section 1. *Be it resolved by the General Assembly of the State of Indiana,* That so much of the act entitled "An act to provide for the call of a convention of the people of the State of Indiana, to revise, amend, or alter the constitution of said State," as relates to the fitting up of the Hall of Representatives for the reception of the convention, under the supervision of the librarian, be and the same is hereby suspended until the next meeting of this General Assembly; and the Governor and Auditor and Treasurer of State are hereby authorized to provide suitable accommodations for the same, either in the Representative's Hall or in the Masonic Hall, or in other suitable building, at their option: *Provided,* The entire rent of any Hall selected for said purpose, shall not exceed the sum of one hundred dollars per month.

Sec. 2. This joint resolution to be in force from and after its passage.

Approved, January 21, 1850.

**132. Official Notice of Election of Constitutional Delegates (June 25, 1850).**

The official notice of the election of constitutional delegates, as provided by the act of January 18, 1850, which was given in Floyd county is as follows:

[*New Albany Daily Ledger, July 24, 1850.*]

STATE OF INDIANA, FLOYD COUNTY, SCT.

I, Isaac N. Akin, Clerk of the Floyd Circuit Court, do hereby certify that at the General Election to be held in and for said county on the first Monday of August next, the following officers are to be elected: Two delegates to the convention to alter or amend the constitution of this State; one representative to the General Assembly of this State; an Auditor; a Treasurer and Collector and one county commissioner.

Witness my hand and seal of said Court, hereto affixed at the Courthouse (seal) in the city of New Albany, this 24th day of June, 1850. I. N. Akin, Clerk.

In accordance with the above notice, I hereby announce that on Monday the 5th day of August next, an election will be held at the usual place of holding elections in said county for the purpose of electing the above named officers.

Given under my hand at New Albany, in said county, this 25th day of June, 1850. Thomas Gwin, Sheriff Floyd Co.

**133. Whig Resolutions (January 16, 1850).**

On January 16, 1850, a meeting of the Whig members of the General Assembly and other prominent and representative Whigs from various parts of the State was held in the Hall of the House of Representatives in Indianapolis. The bill providing for the submission to the people of the question of calling a constitutional convention was then rapidly approaching maturity. The Whigs took this opportunity of enumerating the changes which in their judgment should be made in the constitution and they adopted the following resolutions, inter alia, relative to desirable constitutional changes.

[*Indiana State Journal, January 18, 1850.*]

*Resolved*, That, having a well grounded confidence in the patriotism, intelligence, and political virtue of the People of Indiana, it is our deliberate and settled conviction, that all executive, legislative, and judicial officers should be chosen by a direct vote of the qualified electors, comprising all native and naturalized citizens of Indiana over the age of 21 years, and that we, as citizens, will advocate and defend, on all proper occasions, this great and fundamental doctrine of the Democratic Whig Party of Indiana.

*Resolved*, That, looking at the errors of the past, and to the hopes of the future, we are in favor of such an amendment to the Constitution as will forever prohibit the State authorities from

contracting any loan of money, on the faith of the State, unless to meet engagements heretofore entered into, without a direct vote of the people approving the same, except such sum as may be required to repel invasion, or to sustain our political institutions in time of war.

*Resolved*, That we favor an amendment to the Constitution distributing the county seminary fund (arising from fines and forfeitures hereafter accruing) among the several districts for the use of common schools.

*Resolved*, That it is, in our opinion, highly expedient that the General Assembly, or legislative chambers should meet but once in two years, and that the new Constitution ought to contain a provision to that effect, providing, however, that the Governor have authority, in cases of emergency, to assemble the legislature in extra session, whenever, in his opinion, the public good requires it.

*Resolved*, That, looking to the past experience of Indiana, we are thoroughly convinced that a fruitful source of evil is an excess of local legislation, and that in revising our State Constitution, it should be a primary object to find a remedy therefor; and further that some general provision ought to be adopted having reference to incorporations, county business, and other subjects of legislation, heretofore unnecessarily multiplied.

*Resolved*, That we, as a portion of the citizens of Indiana, do advocate the reduction of the number of offices now existing, in every case where the same can be done without detriment to the efficiency of our system of government—that we are opposed to their multiplication—that a reduction of State expenses, by a reduction of offices and officers, is of vital importance to every interest; and that while the payment of fair salaries, for services rendered, is just both to the people and the servant, no extravagance should be tolerated in remodelling the organic law which is to govern the generations to succeed us.

*Resolved*, That the development and improvement of the agricultural and mineral resources of Indiana, and a fostering care of the mechanic arts, are objects of high importance; and that, in our opinion, such wise legislation should be tolerated, under our new system as will give to these great elements of our wealth and respectability, a first rank in the enterprises which have distinguished the nineteenth century.

*Resolved*, That the exemption of the *Homestead*, or its equivalent in personal property, from forced sale, for debts contracted



*after* the adoption of the new constitution, would be a measure of policy and humanity—that it would be in consonance with our republican institution—that this government owes protection to the wives and children of its citizens, and that a *Home* for innocence and infancy is demanded alike by the impulses which operate upon the human heart, no less than by the teachings of the Divine law—that such a provision in our constitution would tend to repress, in this country, that fatal abuse so long existing in the systems of the old world, overgrown land monopoly (the fruitful source of bloodshed and attempted revolution)—that it would create a spirit of true independence in the political action of the masses of the people, and prove the means, finally, of perpetuating the wise, just, and glorious institutions of our beloved country, adopting the language of Mr. Jefferson, we declare: “Our National independence will never be complete till the *Homestead* of the citizen shall be secured against the misfortunes incident to human life.”

**134. Circular of Indiana State Democratic Central Committee (March 1, 1850).**

On or about March 1, 1850, the Democratic State Central Committee issued a Circular which was designed as an answer to the Whig Resolutions of January 16. The portions of the Circular referring to a constitutional convention are as follows:

[*Daily Lafayette Courier, March 1, 1850.*]

. . . The Whig members in the Indiana legislature, at the recent session ere they left the capital held a secret session, together with some others of the party, in which were no doubt fully and freely discussed the means of gaining a party triumph, either in the next legislature or State convention, to assemble in October, to alter and amend the Constitution of our State, if not in both. This meeting resulted in the adoption of an unusually long string of resolutions, which has been thrown out as Whig principles for the coming canvass.

In relation to the great subject of constitutional reform, there appears to be a studied effort to deceive. It is well known that nearly all the new constitutions that have been lately adopted, have been the work of Democratic conventions. In the acts of those conventions the capacity of the people to elect all their officers, judicial as well as legislative, has been fully vindicated. The power of legislative bodies to contract debts, by a combina-

tion of local interests, so disastrous to our own State, has been curtailed in these Democratic Constitutions, and this feature of reform is very popular in Indiana. Many other questions, under the controlling influence of the spirit of the age, have become self-evident propositions. A number of these have been seized upon by the secret caucus above alluded to, and appropriated as the exclusive property of the Whig party of Indiana. We are glad to see our opponents coming over to these measures, but we demur to the claim they set up. But the question here arises, are these self-evident propositions the only reforms to be made in our State constitution? If so, why all this expense of one hundred and fifty delegates to attend the convention? Why was so much interest manifested, that every portion of the State should be represented? No, fellow-citizens, the object in the adoption of these resolutions was to deceive. It is said, that Satan himself sometimes assumes the appearance of an angel of light, and we know that our first parents were thus deceived. We should profit by the lesson. The whole constitution of our State will be thrown open for alteration and amendment. Democratic conventions have made constitutions in accordance with the spirit of the age and are therefore to be trusted, and we believe there are very many persons, still acting with the Whig party, that would much rather trust our constitution in the hands of a Democratic convention than with their own party friends. . . .

As we believe the time has now come for action, and as we believe that the people of the townships and counties throughout the State, should act on the great questions at issue for themselves, we would respectfully suggest a plan of bringing this desired object about, as follows:

1. We recommend that the Democrats of every township in the State meet at the place of holding the township elections, in each county, on the first Monday in April, and select delegates to a county convention, to nominate candidates for the August election.
2. That the county conventions, for the nomination of candidates, be held in each county, on Saturday, the 13th of April, if some other day shall not be fixed upon.
3. We would also respectfully recommend that at the county conventions, the Democrats in the counties generally, nominate a full ticket, embracing delegates to the convention to amend the Constitution, as well as all other officers.

**135. Joint Delegate Ticket in Marion County (April 13, 1850).**

The Democratic Convention of Marion county was held on April 13, 1850. The Whigs professed a desire to name a compromise delegate ticket containing both Democrats and Whigs. Accordingly, the following communication, setting forth this project, was addressed to the President of the Marion county Democratic convention.

*[Tri-Weekly State Journal, April 24, 1850.]*

Indianapolis, April 13, 1850.

*To the President of the Marion County Democrat Convention.*

SIR—You will please lay the enclosed communication before the body over which you have the honor to preside.

Respectfully,

S. V. B. Noel.

*Secretary of the Marion County Whig Central Committee.*

*Gentlemen of the Democratic County Convention:*

The Central Committee of the Whig party of the county of Marion, impressed with the belief that the good of the community would be best promoted by the selection of a compromise ticket to be run for delegates to the State convention to revise and amend the constitution, and acting in accordance with what they believe to be the wish of the Whig party of Marion county, whom they represent, would respectfully propose to the Democratic convention, this day assembled to nominate candidates for the several offices to be filled in August next, that they (the Democrats) should nominate two candidates only, and that the Whig convention, to be assembled on this day week, shall nominate two other candidates, which four candidates shall receive the joint support of the two parties. Or if our Democratic friends, agreeing to the principle of a compromise by which each party shall have an equal number, shall suggest any other just and practicable mode of carrying out the design, we pledge ourselves, on behalf of the Whig party, to accede to the proposition.

Believing, that an arrangement, such as is above suggested, would accord with the views of a large majority of the voters of Marion county, without distinction of party, that it is honorable and fair, and that it would be promotive of harmony and good feeling in our community, we make the proposition in good faith, and respectfully request that our Democratic friends give it a careful consideration.

On behalf of the Whig County Central Committee.

J. L. Mothershead, Chairman.

S. V. B. Noel, Secretary.



The Democratic convention referred the communication to a select committee of one delegate from each township, who, after deliberation, submitted the following unfavorable report.

[*Tri-Weekly State Journal*, April 24, 1850.]

Mr. President:—The committee appointed to take under consideration, the communication of the Central Committee of the Whig party of the county of Marion, in relation to the selection of a compromise ticket, consisting of two Democrats and two Whigs, to be run as candidates for delegates to the State convention, would respectfully report: That, under a full view of the difficulties attending such a compromise they are of the opinion that it would be inexpedient to adopt the suggestions of the Whig committee. Time prevents your committee from entering into the many reasons for this opinion, but we will briefly state—

1. That there is no certainty that this suggestion would be carried out by the two parties in good faith, if adopted, not having been agitated before the people, especially when we consider that a convention of the Whig members of the last legislature recommended the nomination of full tickets by the Whig party, embracing delegates to the convention, and that most of the decided Whig counties in the State are acting on that suggestion.

This recommendation was also met by the Democratic State Central Committee, who have recommended the nomination of full tickets—that the Democratic county committee of Marion county agreed with the recommendation of the State Central Committee, and this convention has now assembled under these recommendations. These facts being well known to the Whig Central Committee, we cannot but entertain the idea, that this proposition was either thrown in here for the purpose of distracting our counsels, and under the certainty of its rejection, to make political capital in the coming canvass; or the Whig party (or at least its leading men), in view of their situation as a party and the recent triumphs of Democracy throughout the Union, have despaired of electing any of their men under any other method.

2. We candidly ask of Whigs, as well as Democrats, when did ever the Whig party grant any favors to Democrats? Was it in 1840 or was it at any time when they were in the ascendant? Is it now, under this present Taylor administration, when proscription is the watchword throughout the Union?

3. It is contended that there is no use for party in a convention; but what are we about to do? Are we not throwing open to

alteration and amendment the great landmark of our institutions, and is it not desirable that Indiana shall stand on a safe and Democratic foundation? The many arguments that crowd upon us in relation to the great principles to be agitated in the convention render it impossible, in the brief space allotted to us to do justice to any question, and we conclude by saying, that on the ground of expediency, we believe it would be impossible, under existing circumstances, to carry out the suggestions of the Whig committee. We believe we have a sufficient number of good and true democrats in our ranks, that will faithfully represent the people in the convention, and we would admonish our Whig friends to act as their party has recently done in Ohio—aid us in sending to the convention a good Democratic delegation, and we have every confidence that the result of their deliberations will be a Constitution that will be fully and freely ratified by the people of the State. We, therefore, recommend the adoption of the following resolution, and that the Secretaries communicate the same, with the respects of this Convention to the Whig Central Committee of Marion County, to wit:

*Resolved*, That it is inexpedient to adopt the suggestions of the Whig Central Committee of Marion county in relation to a compromise ticket for delegates to the State convention.

The following letter conveying officially the action of the Democratic convention and signed by the two secretaries of the convention was addressed to the chairman and secretary of the Whig County Central Committee.

[*Tri-Weekly State Journal*, April 24, 1850.]

Indianapolis, April 15, 1850.

Gentlemen:—Your communication proposing a compromise between the Whig and Democratic parties of Marion county, in the election of delegates to the constitutional convention, has been received and laid before the Democratic convention. The convention has duly considered your communication, and has adopted the following resolution, which we are directed to communicate to you, with the respects of the Delegates composing the body which we represent:

*Resolved*, That it is inexpedient to adopt the suggestion of the Whig Central Committee of Marion county, in relation to a compromise ticket for Delegates to the State convention.

The Whigs of Marion county assembled on April 20 and the proposal of a joint delegate ticket was taken up. The following resolution was adopted and

all of the correspondence and proceedings to date was then presented to the convention.

[*Tri-Weekly State Journal, April 24, 1850.*]

*Resolved*, That the proposition made on the part of the Whig party to the Democrat convention which assembled on last Saturday, in relation to a compromise ticket for members of the convention, and the proceedings on, and the reply of that convention to the proposition be read for the information of the meeting.

The Whig convention then adopted the following resolution approving the action of the Whig Central Committee, and, all other methods having failed, proceeded to the nomination of candidates for delegates to the Convention.

[*Tri-Weekly State Journal, April 24, 1850.*]

WHEREAS, Organic and constitutional law is paramount to all party measures and party questions; and political parties can properly arise only with reference to the construction of the constitution, and the measures to be pursued under it; therefore,

*Resolved*, That this convention cordially approve of the course taken by the Whig Central Committee of Marion county, in making proposals to the recent Democratic convention of this county, to adopt a compromise ticket of two from each party, for delegates to the constitutional convention.

*Resolved, further*, That the action taken by the said Democratic convention, on the said proposals for a compromise, has put it out of the power of this convention to make its nominations with a view to such compromise, and that it is expedient and proper that this meeting proceed to the nomination of four candidates for said convention.





The Constitutional Convention  
of 1850





## PART IV.

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### THE CONSTITUTIONAL CONVENTION OF 1850.

The Constitutional Convention of 1850 assembled on October 7, 1850, adjourned on February 10, 1851, after having been in session 127 days. The Convention consisted of 50 senatorial and 100 representative delegates, 95 of whom were Democrats, and 55, Whigs. Owing to one death and several resignations, 154 delegates actually served during the sittings of the Convention. The Convention organized by electing George W. Carr, President, W. H. English, Principal Secretary, and such assistant clerks, secretaries, doorkeepers, sergeants-at-arms, messengers, woodmen and stenographers as were necessary to carry on the work of the Convention. For the purpose of considering, drafting and submitting sections to be incorporated in the new constitution, the Convention was divided into 22 standing committees. The material out of which the new constitution was constructed consisted of the corresponding sections of the constitution of 1816; the provisions of the existing constitutions of the other states, especially Illinois and Wisconsin; resolutions submitted by delegates either on their own initiative or on request of their constituents; and recommendations and suggestions of the members of the several committees and other delegates on the floor of the Convention. Of these resolutions there were 333. The first resolution was introduced on October 9, the third day of the Convention, and the last on January 29, only two weeks before final adjournment. After a committee had had time to deliberate, a draft of a section or series of sections was reported to the Convention for consideration. In maturing a section of the Constitution, the procedure followed was substantially identical with that followed in the General Assembly in maturing bills, except that when a section was finally adopted it was referred to a Committee on Revision and Phraseology to be put in final form. Sections which were revised by this committee were usually reported back to the Convention in groups and formally approved. When the Constitution was finally approved it was deposited with the Secretary of State and published in full in three separate issues of the *Indiana State Sentinel*, the *Indiana State*

Journal and the Statesman. The Convention also issued an address to the electors of the State in which was summarized the most important changes in the old Constitution and the arguments for the proposed changes. On February 25, Governor Joseph A. Wright issued his official proclamation notifying the electors that an election would be held on the first Monday of August on the adoption or rejection of the Constitution as a whole and on the adoption or rejection of the article relative to the exclusion of negroes and mulattoes from the State. The election was held on August 4, 1851. The total number of votes polled for the Constitution in the counties making returns was 109,319, the total number of votes polled against the Constitution was 26,755; the majority for the Constitution was 82,564. The total number of votes polled for the exclusion and colonization of negroes and mulattoes was 109,967; the total number of votes polled against the exclusion and colonization of negroes and mulattoes was 21,066; the majority in favor of the exclusion and colonization of negroes and mulattoes was 88,910. Since both the Constitution as a whole and the article relative to the exclusion and colonization of negroes were adopted by substantial majorities, the Governor issued his proclamation on September 3, 1851, declaring the whole Constitution, including the thirteenth article "to take effect and be in force on and after the first day of November, A.D., 1851."

**136. Suitable Room for Holding Sitzings of Convention of 1850 (October 7, 1850).**

By a resolution adopted on January 21, 1850, the Governor, Auditor and Treasurer of State were required to procure a suitable room for the sittings of the Constitutional Convention. (See Document No. 131.) The following communication and correspondence sets forth the efforts made by this committee. The information was laid before the convention on October 8, 1850.

[*Convention Journal*, 19.]

Executive Department, Oct. 7, 1850.

HON. G. W. CARR,

President of the Convention:

Please lay before the body over which you have the honor to preside, the accompanying correspondence. Having failed in procuring the Masonic Hall for the use of the Convention, under the restriction of the legislature, we have prepared the Hall of the

House for their reception, leaving it to the Convention to take such action in the premises as may be deemed proper.

We have the honor to be, etc.

JOSEPH A. WRIGHT, Governor

JAMES P. DRAKE, Treasurer of State,

E. W. H. ELLIS, Auditor of State.

Indianapolis, May 6th, 1850.

WM. SHEETS, Esq.:

Dear Sir:—Under an act of the last legislature, the undersigned are authorized to contract with you for the Masonic Hall for the use of the State Convention to revise the Constitution, at a rate not exceeding one hundred dollars per month. We are authorized to close such a contract immediately if our proposition shall be accepted.

An early answer is desired.

Respectfully,

JOSEPH A. WRIGHT, Governor,

JAMES P. DRAKE, Treasurer,

E. W. H. ELLIS, Auditor.

Indianapolis, May 9th, 1850.

MESSRS. ELLIS, DRAKE, and WRIGHT:

Gentlemen:—Your note of the 6th inst., in relation to the use of the large room in the Masonic Hall for the sitting of the Convention has just been received. I cannot, in justice to the stockholders, for whom I act, contract for the occupancy of the room at the rate you propose, viz., one hundred dollars per month; but I will agree to prepare the room as stated in a former letter, keep it in order during the session of the Convention, for twenty dollars per day; or I will prepare the room for the use of the Convention, leaving the compensation to be fixed by the Convention itself.

Respectfully,

Your ob't serv't,

WM. SHEETS, Commissioner.

### 137. Rules and Orders of the Convention (October 14, 1850).

On October 7, the Convention adopted a resolution providing "That a committee be appointed by the Chair to prepare and report rules of order for the government of the proceedings of this Convention; and until said committee report, and it be otherwise ordered, the rules of the House of Representatives of this State be adopted by this Convention, as regulations to govern its proceedings and deliberations, so far as the same are applicable."



On October 8, by an appropriate resolution, the Convention fixed the number of this committee at thirteen, one from each judicial circuit. On October 9, the Chair named the members of this committee, and on October 11, the committee submitted a report and recommended its adoption. This report was considered on October 14, and the rules therein recommended were adopted with some amendments, as follows:

[*Convention Journal*, 34-57.]

1. The President shall take the chair every day at the hour to which the Convention shall have adjourned on the preceding day; shall immediately call the members to order, and on the appearance of a quorum, shall cause the journal of the preceding day to be read.

2. The President shall preserve order and decorum; may speak to points of order in preference to other members, rising from the chair for that purpose, and shall decide questions of order, subject to an appeal to the Convention by any two members thereof.

3. The President rising from his seat, shall distinctly put the question, in this form, viz.: As many as are of opinion that (as the question may be) say aye—contrary opinion, say no.

4. If the President doubt, or a division be called for, the members shall divide: those in the affirmative first rising from their seats, and afterwards those in the negative.

5. Any member may call for the statement of the question, which the President may give sitting.

6. The President, with ten members, shall be a sufficient number to adjourn; twenty-five to call the convention, and send for absent members and make an order for their censure or acquittal; and a majority of the whole number shall constitute a quorum to proceed to business.

7. When a member is about to speak in debate, or deliver any matter to the Convention, he shall rise from his seat, and respectfully address himself to Mr. President; and shall confine himself to the question under debate, and avoid personality; and no member shall impeach the motives of any other member either in his vote or his argument.

8. If any member in speaking, or otherwise transgress the rules, the President shall, or any member may, call to order; in which case, the member so called to order, shall immediately sit down, unless permitted by the convention to explain; and the Convention shall, if applied to, decide on the case, but without debate. If the decision be in favor of the member so called to order,

he shall be at liberty to proceed, if otherwise, and the case require it, he shall be liable to the censure of the Convention.

9. When two or more members happen to rise at the same time, the President shall name the person who is first to speak.

10. No member shall speak more than twice on the same question, without leave of the convention, nor more than once until every member, choosing to speak, shall have spoken.

11. Whilst the President is putting a question, no one shall walk across the room; nor, whilst a member is speaking, enter on private discourse, or pass between him and the Chair.

12. No member shall vote on any question who was not within the bar when the same was put; and when any member shall ask leave to vote, the President shall propound to him this question: *Were you within the bar when your name was called?*<sup>1</sup>

13. Upon calls of the Convention, for taking yeas and nays, on any question, the names of the members shall be called alphabetically, and each member shall answer from his seat.

14. Any ten members shall have the right to call the yeas and nays, provided they shall request it before the question is put, but every member shall have the right to enter his protest upon the journal without argument.<sup>2</sup>

15. Any member may call for the division of a question, which shall be divided, if it contain propositions in substance so distinct that one being taken away a substantive proposition remains for the decision of the Convention. A motion to strike out and insert shall be deemed indivisible; but a motion to strike out being lost, shall not preclude an amendment, nor a motion to strike out and insert.

16. After a motion is stated by the President, or read by the Secretary, it shall be deemed in possession of the Convention, but may be withdrawn at any time before decision or amendment.

17. When a question is under debate no motion shall be received but to adjourn, to lay on the table, for the previous ques-

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1. Notice was given on November 21, that an attempt would be made to change the rules "to admit any member to vote if within the hall, when the question is put." This is apparently a proposed amendment to Section 12. There is no evidence that the proposal was adopted (p. 281).

2. As originally reported by the committee, Rule No. 14 read as follows: "Any ten members shall have a right to call the yeas and nays, provided they shall request it before the question is put." On December 18, notice was given that an attempt would be made to amend the fourteenth rule by striking out the word "ten" and inserting the word "thirty." On December 19, the word "thirty" was stricken from the proposed amendment and the word "twenty" inserted in lieu thereof by a vote of 76-39; the proposed amendment as amended was then rejected by a vote of 51-65 (pp. 471, 480).

tion, to postpone indefinitely, to postpone to a day certain, to commit, or amend; which several motions shall have precedence in the order they stand arranged; and no motion to postpone to a day certain, to commit, or to postpone indefinitely, having been decided, shall be again allowed on the same day, and at the same stage of the article or proposition.<sup>3</sup>

18. The previous question shall be in this form—"Shall the main question be now put?" It shall be admitted only when demanded by a majority of the members present; and its effect shall be to put an end to all debate, and bring the Convention to a direct vote upon amendments reported by a committee, if any, then upon pending amendments, and then on the main question. On a motion for the previous question, and before the seconding of the same, a call of the Convention shall be in order; but after a majority shall have seconded such motion, no call shall be in order prior to a decision of the main question. On a previous question there shall be no debate. All incidental questions of order, arising after a motion for the previous question is made, and pending such motion, shall be decided, whether on appeal or otherwise, without debate. If it should be decided that the question should

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3. On October 29 an unsuccessful attempt was made to amend Rule 17, to provide "That no member of this Convention be permitted to speak more than one-half hour, on any question, at one time" (pp. 146, 155). On November 9, notice was given that an attempt would be made to amend this rule to provide "That from and after Tuesday next (November 12), no member, in making a speech, shall occupy more than twenty minutes" (p. 231). On November 12, to carry out this notice, the following resolution was submitted: "That no member, in making a speech upon an original proposition or resolution, shall occupy more than thirty minutes; and, on amendments, more than ten minutes." The words, "without leave of the Convention" were added to the proposed resolution and the whole was then laid on the table by a vote of 62-52 (p. 243). On November 16, this resolution was again taken up for consideration and again laid on the table by a vote of 66-25. Thereupon, the following substitute was proposed: "That after Tuesday next (November 19), no member of this Convention shall speak more than fifteen minutes on any amendment, and then only by way of explanation, or more than thirty minutes on any original proposition." This substitute was adopted. A motion was then made to refer this substitute to a committee of five with instructions to amend to read as follows: "That no member in debating any question before the body shall speak more than thirty minutes, without special leave of the Convention." This motion was rejected. An amendment was then proposed and adopted by a vote of 68-34 providing that "no member in debating any question before the body shall speak more than thirty minutes" (p. 259). On November 22, notice was given that an attempt would be made to amend this rule to read that "No delegate shall speak longer than one hour at a time; nor, in any debate arising on the third reading of an article or section, or on a motion to refer, at that stage, more than fifteen minutes" (p. 285). On November 23, this rule was amended to read as follows and was adopted: "That no delegate shall speak more than one-half hour at one time; nor more than fifteen minutes in the following cases, viz:

- 1st. On any motion to reconsider a section that has been passed or engrossed.
- 2d. In any debate on the final passage of a section or on a motion to refer the same.
- 3d. In any debate arising on a report from the Committee on Revision (p. 292).



not be put, the main question shall still remain under consideration.

19. In taking the sense of the Convention a majority of the votes of the members present shall govern.

20. No article or section of the Constitution shall be finally concluded and agreed upon until the same shall have been read upon three several days, unless two-thirds of the members present shall think it necessary to dispense with this rule, which shall be decided without debate.

21. The Convention shall resolve itself into a committee of the whole whenever deemed necessary, and whilst in committee of the whole shall be governed by the rules of the Convention, so far as the same may be applicable, except the rules limiting the times of speaking; but no member shall speak twice to any question, until every member choosing to speak shall have spoken. Upon any article or section being committed to a committee of the whole, the same shall be read throughout by the secretary, and then again read and debated by clauses, leaving the preamble to be last considered. The body of the article or section shall not be defaced or interlined, but all amendments, noting the page and line, shall be duly entered by the secretary on a separate paper, as the same shall be agreed to by the Convention, and so reported to the Convention; after report, the article or section shall be subject to be debated and amended by clauses before a question to engross it be taken.<sup>4</sup>

22. The President shall appoint committees, liable to addition on motion of any member, unless otherwise directed by the Convention.

23. A motion to adjourn shall always be in order, and be decided without debate.

24. On all questions when yeas and nays are called, the President shall vote, his name being called last; and in the case of an equal division the question shall be considered lost; and upon all questions when the Convention is equally divided, he shall give the

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4. As originally reported by the committee, Rule No. 21 read as follows: The Convention shall resolve itself into a committee of the whole whenever deemed necessary, and whilst in committee of the whole shall be governed by the rules of the Convention. Upon any article or section being committed to a committee of the whole, the same shall be read throughout by the Secretary, and then again read and debated by clauses, leaving the preamble to be last considered. The body of the article or section shall not be defaced or interlined, but all amendments, noting the page and line, shall be duly entered by the Secretary on a separate paper, as the same shall be agreed to by the Convention, and so reported to the Convention; after report, the article or section shall be subject to be debated and amended by clauses before a question to engross it be taken.

casting vote, or when his vote shall make an equal division, he shall vote upon a call of any member, and in such case of equal division the question shall be lost.

25. The President shall have the general direction of the Hall wherein the Convention sits, and shall have the right to name any member to perform the duties of the Chair; but such substitution shall not extend beyond an adjournment.

26. No committee shall meet during the sitting of the Convention without special leave, and all writs, warrants, and subpoenas, issued by order of the Convention, shall be under the hand of the President, and attested by the principal secretary.

27. In cases of any disturbance or disorderly conduct in the gallery or lobby, the President or chairman of the committee of the whole shall have power to order the same cleared.

28. All questions relating to the priority of business shall be decided without debate.

29. If a member be called to order for words spoken in debate, the person calling him to order shall repeat the words excepted to, and they shall be taken down in writing at the secretary's table, and no member shall be held to answer, or to be subject to the censure of the Convention, for words spoken in debate, if any other member has spoken, or other business has intervened after the words spoken, and before exception to them shall have been taken.

30. Every member who shall be in the Convention when the question is put, shall give his vote, unless the Convention for special reasons, shall excuse him. And should any member present not excused from voting, refuse to vote when his name is called, the Convention shall direct the secretary to make an entry on the journal, that said member was present and called but refused to vote. All motions to excuse a member from voting shall be made before the Convention divides, or before the ayes and noes are commenced; and any member requesting to be excused from voting, may make a brief verbal statement of the reasons for making such request, and the question shall then be taken without further debate.<sup>5</sup>

31. The unfinished business in which the Convention was engaged at the last preceding adjournment, shall have the preference in the orders of the day, and no motion or any other business shall

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5. As originally reported by the committee, Rule No. 30, contained the words "to vote on the question" after the word "called" in line and four before the word "but" in line six.

be received without special leave of the Convention, until the former is disposed of.

32. Upon the second reading of any article or section, the President shall state that it is ready for commitment, or amendment, or engrossment; and if committed, then the question shall be, whether to a select or a standing committee, or to a committee of the whole; if to a committee of the whole, then the Convention shall determine on what day; but if the article or section presented be ordered to be engrossed, the Convention shall appoint the day when it shall be read the third time; and upon the third reading the yeas and nays shall in all cases be taken and recorded.<sup>6</sup>

33. Every article or section ordered to be engrossed shall be written in a fair, round, plain hand.

34. All questions, whether in committee of the whole or in the Convention, shall be propounded in the order in which they are moved, except that in filling up blanks, the largest sum and the longest time shall be first put.<sup>7</sup>

35. When a motion has been once made and decided in the affirmative or negative, it shall be in order for any member of the majority, at any time, to move for the reconsideration thereof. But the question shall not be taken on the same day, unless by unanimous consent; and if lost, shall not be renewed, or any vote taken on a reconsideration a second time, unless with the unanimous consent of the Convention. If the motion to reconsider is not made on the same day, one day's notice shall be required to be given of the intention to make it.<sup>8</sup>

36. Any article or section, after commitment and report thereon to the Convention, or at any time before it is finally concluded and agreed upon, may be recommitted.

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6. Notice was given on November 15 to amend the thirty-second rule so "that any article or section ordered to be engrossed, shall be placed on the regular file, and shall first come up for action." Apparently no further action was taken on this proposition (p. 254).

7. As originally reported by the committee, Rule No. 34 did not contain the words "of the whole" after the word "committee" in line one.

8. As originally reported by the committee, Rule No. 35 did not contain the word "unanimous" before the word "consent" in line five; and instead of the word "one" the word "three" occurred in line eight requiring three days' notice of an intention to move to reconsider. On October 19, the words "but the question shall not be taken on the same day, unless by unanimous consent" were stricken out (pp. 97, 102). On November 12, Rule No. 35 was amended to read as follows: When a motion has been once made and decided in the affirmative or negative, it shall be in order for any member of the majority to move for the reconsideration thereof, on the same or any other day, during the session of this Convention (pp. 226, 242).



37. Every resolution of an important character, if objection be made, shall lie over one day.<sup>9</sup>

38. No standing rule or order of the Convention, shall be rescinded or changed without one day's notice being given of the motion therefor. Nor shall any rule be suspended except by a vote of at least two-thirds of the members present. Nor shall the order of business, as established by the rules of the Convention be postponed or changed, except by a vote of at least two-thirds of the members present.

39. No member shall absent himself from the service of the Convention unless he have leave, or be sick and unable to attend.<sup>10</sup>

40. The duty of the door-keeper shall be to give notice to the Convention of all messages, to carry all messages the Convention may require, private as well as public; when requested to call a member of the Convention he shall do so by name. He shall keep the Hall clean and have a good fire made therein by the hour of nine o'clock in the morning, when the weather requires it.

41. It shall also be the duty of the door-keeper to attend the Convention during its sittings; to keep the Hall and committee rooms in perfect order; and in all things to execute the commands of the President and of the Convention from time to time.

42. It shall be the duty of the sergeant-at-arms to attend the Convention during its sittings; announce all messages; preserve order in the lobbies and galleries of the Hall; and to execute all process issued by the authority of this Convention and directed to him by the President thereof.

43. No person shall be allowed to smoke within the Hall, nor within the lobbies or galleries thereof.

44. Any resolution or other proposition introduced by any

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9. On October 16, Rule No. 37, was amended by consent to read as follows: Every resolution of instruction to a standing committee of an important character, if objection be made, shall lie over one day (pp. 73, 86). On January 22, the thirty-seventh rule was stricken out (pp. 734, 743).

10. On November 14, Rule No. 39 was amended to read as follows: That the roll be called each morning, and the names of the absentees noted and entered upon the journal of our proceedings: Provided, That any delegate not answering to his name at the calling of the roll, and being present during the day, may, on reporting himself to the secretary, have his name struck from the list of absentees. And it shall further be the duty of the secretary, on each motion to adjourn, to note on the journal the mover's name, and the precise hour of the day. Adopted on November 15 by a vote of 71-34. An amendment that "hereafter the Convention will meet at half-past eight o'clock until the close of the convention" was declared out of order (pp. 250, 254). Later on November 18 this rule was amended to read "that the calling of the roll every morning shall be dispensed with" (pp. 257, 264).

delegate for the purpose of referring the same to any standing committee, shall embrace one subject only.<sup>11</sup>

### 138. Supplementary Rules and Orders of the Convention.

The following supplementary rules were adopted from time to time as indicated below:

1. No member shall offer more than one resolution on the same day until every member choosing to offer a resolution has done so. Adopted by consent on October 17 (pp. 74, 93).

2. The minority of a committee may report, without argument, articles or sections for the new Constitution expressing the views of such minority. Adopted on October 29 (pp. 142, 153). A proposed amendment, that "such report shall be made without assigning any reasons for the same," was rejected.

3. All sections of the amended Constitution, reported from the standing committees, shall be printed on their first reading. Adopted on October 28 by consent (pp. 139, 142).

4. That in all cases, the sections of the amended Constitution, reported by the minority of a standing committee, be printed along with the sections reported by the majority of the same committee. Adopted on October 29 (p. 154).

5. The previous question shall not cut off a motion to commit previously made. Adopted December 13 (pp. 429-30).

6. On Saturday, resolutions shall have precedence of all other business until 11 o'clock a. m. at which time the order of the day shall be taken up, and speeches on resolutions shall be limited to five minutes each. Adopted December 27 (pp. 518, 544-45).

7. When a section or article has been recommitted with instructions, it shall not be in order to move additional instructions to said committee. Adopted January 2 (pp. 562, 588).

8. That the rules be so altered that it shall be in order, immediately after an article is disposed of, to introduce an additional section. Adopted January 24 (pp. 743, 764).

9. That after Tuesday next (February 4, 1851) no new sec-

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11. Rule No. 44 was not contained in the original report of the committee; it was proposed on the floor of the Convention by Mr. Graham of Warrick and adopted. An amendment to Rule No. 44, offered by Mr. Smith of Ripley, "That no member shall offer more than one resolution on the same day, and that each resolution shall embrace but one subject", was rejected. An additional rule, proposed by Mr. Zenor, that "Any member submitting any matter which may be referred to any of the standing committees, shall be considered a member of the committee during the investigation of the subject", and an amendment to this proposed rule, submitted by Mr. Hardin and accepted by Mr. Zenor, designed to add after the word "subject" the words "but shall have no right to vote in such committee", was rejected by the Convention.

tion shall be introduced; nor shall any motion be entertained to reconsider the passage of any section, unless three-fourths of the Convention so order. Adopted February 1 (p. 877).

10. Resolutions shall take precedence of the order of the day on every Saturday. Adopted November 2 (p. 189).

11. Each section may be separately engrossed or passed. Adopted November 12 (pp. 241-42).

12. That the rule requiring committees to report without argument, be suspended as to the Committee on Elections. Adopted October 18 (p. 97).

### 139. Rules and Orders Proposed and Rejected.

The following rules were proposed but apparently never adopted:

1. It shall not be in order to entertain a motion for the adoption of a resolution, where one of similar import has already been adopted. October 15 (p. 77).

2. Notice was given on November 21, to change the rule "to admit any member to vote if within the hall, when the question is put." Obviously no further action was taken (p. 281).

3. Notice was given on November 29, to amend the rules to provide that "a motion to reconsider a section that has passed, shall not be in order unless made within three days after its passage." No further action (p. 309).

4. December 13, notice was given that an attempt would be made to rescind the rule setting apart Saturday of each week for resolutions. The proposition was rejected (pp. 430, 444).

5. On December 13, notice was given of an attempt to amend the rules by adding that "No section of the new Constitution shall pass, unless the same shall be voted for by a majority of all the members elected to the Convention." This proposed amendment was laid on the table on December 14 (pp. 432, 448).

6. On December 26, notice was given to amend the rules of proceedings as follows but apparently the propositions were given no further consideration.

Rule —. Whenever any of the printed numbers or reports of committees containing sections of the Constitution shall come on a second reading, if amendments are suggested, they shall be thereupon referred to a committee of the whole for that purpose, upon which the Convention may then or at any future time, resolve itself into such committee of the whole to consider the same, on which occasion the President shall call some member to pre-



side for the time being, or the Convention may resolve itself into a quasi committee of the whole, during which the President shall continue to occupy the chair.

Rule —. No proposition to amend any such printed section shall be considered or adopted in Convention, unless by unanimous consent, until after it has been submitted and discussed in committee of the whole, or in such quasi committee, or unless one day's notice thereof shall have been given in Convention.

Rule —. Sections after having been amended materially and such as may be adopted in addition to such printed sections by the way of amendment, shall be printed as amended before being read the third time and finally passed.

Rule —. After the business is disposed of, and previously to taking up the orders of the day, one hour is appropriated for the introduction of resolutions, and for that purpose the names of the members shall be called as they stand upon the list; and upon the presentation of any resolution, if opposition is made, no discussion shall be then had, but the same shall lie over until the next day.

Rule —. No member shall be heard in debate or be allowed to vote except from his desk.

Rule —. No member shall be allowed to speak more than fifteen minutes, except upon original propositions or upon leave granted.

7. In accordance with notice previously given, the following proposed amendment to the rules was submitted: "Amendments may be made by adding sections to any report of any standing committee after the Convention shall have gone through the consideration of such report, and not while the Convention shall be considering such report." An attempt to amend by striking out the words "and not while the Convention shall be considering such report", and by adding that "no proposition on the engrossment having been voted down shall be offered or entertained as instruction to the same section on the third reading", was rejected. The original proposed amendment seems to have been laid on the table (pp. 551-52).

8. A proposed amendment "That hereafter the Convention meet in the morning at half-past eight o'clock instead of nine", was indefinitely postponed after two subsidiary amendments providing "that this Convention will hold a night session" and "will not in future adjourn for dinner", were adopted January 4 and 11 (pp. 605, 643-44).

9. A proposition to amend the rules to provide that "No

delegate shall be allowed to change his vote or to record the same after the roll shall have been called'', was rejected. January 24 and 31 (pp. 777, 859).

10. The following proposition was submitted but not adopted: "In all cases where members leave their seats and roam and swagger about the Hall, or hold loud conversations to the annoyance of others, the President shall call upon such members by name to take their seats, or be silent, and the secretary shall enter the name of such member or members upon the journal, with the cause of the call." January 24 (p. 777).

11. "That the failure of a motion to reconsider any vote on a section heretofore passed, shall not prevent a motion to instruct the Committee on Revision in regard to the same section." No further action after introduction (p. 783).

12. Reports made by the Committee on Revision, arrangement, and phraseology, may, if a majority so direct, be considered by sections, so that the question of concurrence may be taken on each amended section separately. Not further considered (p. 882).

#### 140. Resolutions Submitted to the Convention of 1850 by Delegates.

As soon as the Convention was organized, the delegates began to submit resolutions embodying provisions which they or their constituents desired to have incorporated in the new Constitution. The first of these resolutions was submitted on October 9, the third day of the Convention; the last on January 29, only two weeks before final adjournment. All told, 333 such resolutions were proposed. Such proposed resolutions were acted upon by the Convention, and either adopted or rejected; if adopted, they were submitted to the appropriate committee for consideration. No attempt has been made, except in important instances, to record the action of the Convention on these proposals, and they are here arranged under convenient headings to indicate the raw material out of which the Constitution was constructed.

[*Convention Journal.*]<sup>12</sup>

##### (a) RIGHTS AND PRIVILEGES OF CITIZENS.

1. Property Rights of Married Women—*Resolved*, That women hereafter married in this State shall have the right to acquire and possess property, to their sole use and disposal; and that laws shall be passed, securing to them, under equitable conditions, all property, real and personal, whether owned by them before marriage, or acquired afterwards, by purchase, gift, devise or descent,

12. Citations are to page numbers of the Convention Journal.

and also providing for the registration of the wife's separate property. Owen (p. 30).

2. White Females' Right of Petition—*Resolved*, That a provision be incorporated in the Constitution of the State of Indiana to instruct our representatives to provide by law the right of petition to all white females of the age of eighteen and upwards to the Indiana Legislature for such laws as will tend to protect their best interest and that of their posterity. Steele (p. 48).

3. Prohibiting Taking Property Without Consent and Compensation—*Resolved*, That the Committee on the Rights and Privileges of the inhabitants of this State be instructed to inquire into the expediency of placing in the bill of rights a provision prohibiting the legislature of the State from the enacting of laws authorizing incorporated companies taking the property of any person without his or her consent, and without a just compensation therefor, to be paid before the using of it. Shoup (p. 61).

4. Prohibiting Taking Property or Services Without Consent or Compensation—*Resolved*, That the Committee on the Rights and Privileges of the inhabitants of this State, inquire into the expediency of adopting as a constitutional provision, that no man's particular services shall be demanded or property taken or applied to public use without the consent of his representatives, or without a just compensation being first made therefor. Terry (p. 64).

5. Prohibiting Imprisonment For Debt—*Resolved*, That the Committee on the Rights and Privileges of the inhabitants of this State be instructed to inquire into the propriety of incorporating a section in the bill of rights prohibiting imprisonment for debt in any case whatever. Milligan (p. 66).

6. Homestead Exemptions—*Resolved*, That the Committee on Rights and Privileges be instructed to inquire into the expediency of securing, by a declaration in the bill of rights, to the head of each family in the State of Indiana, a reasonable homestead exemption. Hawkins (p. 67).

7. Preservation of Legal Rights to Women Entering into Married State—*Resolved*, That it be referred to the Committee on the Rights and Privileges of the inhabitants of this State, to enquire into the expediency of adding another section to our present bill of rights, to read as follows: Women who may enter into the married state from and after the ratification of this constitution by the people, shall not lose or forfeit any legal rights by said marriage. Milroy (p. 70).

8. Unassailable Land Titles—*Resolved*, That in our amended



Constitution we will provide that when any person or persons shall have any real estate in this State, either by legal or equitable title for the term of——— years from the adoption of this Constitution on which the taxes have been paid, and all disability of minors removed, that such title shall be recognized by all the courts as the paramount title, and good against the world, and the rest of mankind. Wolfe (p. 73).<sup>13</sup>

9. Unrestricted Possession, Inheritance and Alienation of Property of Married Women—*Resolved*, That there be incorporated in the Constitution the principle, that the real and personal estate of every female acquired before marriage, and all property to which she may afterwards become entitled by gift, grant, inheritance or devise, shall be and remain the separate estate and property of such female, and shall not be liable for the debts, obligations, or engagements of her husband; and may be aliened, devised, or bequeathed by her as if she were unmarried. Borden (p. 77).

10. Guaranteeing Right of Trial by Jury in all Cases—*Resolved*, That the Committee on the Rights and Privileges of the inhabitants of this State be instructed to inquire into the expediency of so amending section five, of the first article of the Constitution, as to guarantee to the inhabitants of this State their right to a trial by jury in all civil and criminal cases whatever, whatever may be the amount in controversy, or the nature of the offense. May (p. 80).

11. Guaranteeing Right of Trial by Jury in all Cases—*Resolved*, That the Committee on the Rights and Privileges of the inhabitants of this State be instructed to inquire into the expediency of so amending the 5th section of the 1st article of the Constitution, that in all cases, both civil and criminal, the right of trial by jury shall remain inviolate. Kelso (p. 90).

12. Right of Married Women to Acquire, Possess and Alienate Property, Separate Registration—*Resolved*, That the Committee on Rights and Privileges of the inhabitants of the State inquire into the expediency of incorporating in the bill of rights, the following section: Women hereafter married in this State, shall have the right to acquire and possess property, to their sole use and disposal; and laws shall be passed, securing to them, under equitable conditions, all property, real and personal, whether owned by them before marriage, or acquired afterwards, by pur-

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13. The words "and the rest of mankind," at the end of the resolution, were proposed by Mr. Edmonston and adopted by the Convention.

chase, gift, devise, or descent, and also providing for the registration of the wife's separate property. Owen (p. 101).<sup>14</sup>

13. Reducing Constitutional Area of Counties to Three Hundred Square Miles—*Resolved*, That the Committee on County and Township Organization be instructed to inquire into the expediency of amending the 12th section of the 11th article of our present State Constitution as follows: Strike out four hundred where it occurs and insert three hundred. Huff (p. 119).

14. Disposition of Estates of Minor Heirs During Non-Age—*Resolved*, That the Committee on Rights and Privileges, etc., be instructed to inquire into the expediency of providing in the Constitution that no act of the legislature shall dispose of the estate of minor heirs during their minority. Prather (p. 120).

15. Religious Freedom, Irregular Moral Practices—*Resolved*, That Committee No. 1 be directed to inquire into the expediency of incorporating the following section in article 1 of the Constitution, to-wit: That the free exercise and enjoyment of religious opinions and worship without discrimination or preference, shall always be allowed in this State to all mankind, and no person shall be rendered incompetent to be a witness on account of his opinions or religious belief; but that liberty of conscience, hereby secured, shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of this State. Wiley (p. 120).

16. Competency of Witnesses because of Religious Beliefs—*Resolved*, That the Committee on the Rights and Privileges of the inhabitants of the State be instructed to report to this Convention on the expediency of incorporating into the Constitution the third section of the first article of the existing Constitution with the following amendment, viz.: and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief. Haddon (p. 121).

17. Prohibiting Reduction of Area of Organized Counties below Four Hundred Square Miles—*Resolved*, That the Committee on County and Township Organization, powers, and officers, be instructed to report a section for the new Constitution in lieu of section 12, article 11, of the present Constitution, expressly pro-

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14. As originally proposed, the resolution contained the word "hereafter" after the word "women", but was stricken out on motion of Mr. Kelso.

hibiting the legislature from reducing any county now organized below four hundred square miles. Kilgore (p. 133).<sup>15</sup>

18. Boards of County Commissioners—*Resolved*, That the Committee on County and Township Organization, powers, and officers, inquire into the expediency of inserting in the Constitution the following provision: The legislature shall provide by law for a uniform mode of doing county business by organizing, in each county in this State, a board of commissioners for transacting county business, to consist of three qualified electors, to be elected by the qualified voters of the several counties respectively. Logan (p. 133).

19. Political Disabilities for Fighting Duels—*Resolved*, That the Committee on Criminal Law inquire into the expediency of incorporating in the new Constitution, a provision to prevent any citizen of the State, who may give, accept, or knowingly carry a challenge to any person or persons to fight in single combat with a citizen of the State, with any deadly weapon, either in or out of the State, from holding any office of honor or profit, civil or military in this State: Moreover, to be punished as the General Assembly may prescribe by law. Smiley (p. 157).

20. Salaries of Public Officers Liable to Attachment—*Resolved*, That the Committee on the Practice of Law and Law Reform be instructed to inquire into the expediency of engrafting in the new Constitution, a provision making the salaries and pay of each public officer in this State liable to attachment on execution for the payment of his debts, as the property of other citizens is liable. Bowers (p. 157).

21. Property Sold on Execution for not Less than Two-Thirds its Appraised Value—*Resolved*, That the Committee on Rights and Privileges of the inhabitants of this State be instructed to inquire into the expediency of providing, that hereafter all property sold on execution shall bring at least two-thirds of its appraised value.<sup>16</sup> Kendall of Wabash (p. 157).

22. Five Hundred Dollars Exemption from Seizure; Alienation—*Resolved*, That the committee of one from each congressional district, on the subject of homestead exemption, be instructed to inquire into the expediency of inserting into our amended Constitution a clause recognizing the right of the debtor to enjoy the neces-

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15. On October 26, this resolution was considered. Mr. Lockhart wished to amend by leaving the size of counties to be regulated by the legislature. Resolution and amendment were laid on the table (p. 139).

16. An attempt to strike out the words "two-thirds" and insert "full", and to strike out the word "property" and insert "real estate" was defeated.



sary comforts of life by exempting from seizure or sale, for the payment of any debts or liability hereafter contracted, the value of five hundred dollars in real or personal estate, at the election of the debtor or debtors: Provided, That he, she, or they have families; nor shall the owner, if married, have the power to alienate said protected property without the consent of the wife, to be expressed as the legislature may hereafter direct. Dick (p. 160).

23. Patents and Copyrights—*Resolved*, That the Committee on the Rights and Privileges of the inhabitants of this State, be instructed to inquire into the expediency of reporting a section in the new Constitution securing to inventors and authors, the right to their inventions and works to themselves and their heirs forever. Biddle (p. 226).

24. Widow's Third—*Resolved*, That the Committee on Law and Law Reform inquire into the expediency of providing in the Constitution, that no law shall deprive the widow of an intestate, leaving no children, of more than one third of her deceased husband's property; and that under the right of dower as to all lands owned by deceased husband at the time of his death, his widow shall be entitled to one third of the land in fee absolute, instead of in life estate only. Prather (p. 228).

25. Vending Articles of Domestic Manufacture Without License—*Resolved*, That the Committee on Rights and Privileges be and they are hereby instructed to inquire into the expediency of reporting to this convention a section for the new Constitution, as follows:

Section —. The General Assembly shall not pass any law requiring a license for the sale of any article the product of the United States, or which may be manufactured out of such product. Robinson (p. 233).

26. Inalienable Rights—*Resolved*, That the Committee on the Rights and Privileges of the inhabitants of this State be instructed to report the first section of article first of the present Constitution, which reads as follows: All men are born equally free and independent, and have certain natural, inherent, and inalienable rights, among which are the enjoying and defending life and liberty, and acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety. Crumbacker (p. 286).

27. Boards of County Commissioners—*Resolved*, That the Committee on County and Township Organization be instructed to inquire into the expediency of inserting in the Constitution a

proviso similar to the following, viz.: It shall be the duty of the legislature to provide by law for the organization in each county of a board to consist of one commissioner from each township, to be elected annually by the people thereof, in which board shall be vested such powers of local legislation as the legislature may find practical and expedient. Borden (p. 286).

28. Descent of Property, Residents and Aliens—*Resolved*, That the Committee on the Rights and Privileges of the inhabitants of this State, inquire into the expediency of inserting in the bill of rights the following section: No distinction shall ever be made by law between resident aliens and citizens, in reference to the possession, enjoyment, or descent of property. Pepper of Crawford (p. 286).

29. Township Trustees, Collectors and Assessors—*Resolved*, That the Committee on County and Township Organization, be instructed to inquire into the expediency of providing in the amended Constitution for the election of three trustees in each of the several townships in this State, in whom shall be vested the transaction of all township business; and also inquire into the propriety of electing one assessor and one collector in each of said townships. Bascom (p. 324).

30. Life Estate for Widow—*Resolved*, That the Committee on Rights and Privileges be instructed to inquire into the expediency of reporting the following section:

Sec. —. The life rental of all real estate of which an intestate husband shall die seized, shall be secured to his widow, under equitable conditions by law. Owen (p. 325).

31. Interests of Widows and Orphans—*Resolved*, That the Committee on Rights and Privileges be directed to inquire into the expediency of reporting to this Convention, a section of the new Constitution to the following effect, viz.: That the General Assembly shall pass such laws as will more perfectly and extensively protect the rights and interests of widows in the property of their deceased husbands, and also providing for the children of deceased fathers, or other parent, a more equitable use of the property of the decedents. Morrison of Marion (p. 325).

32. Tenancy by Courtesy to Widows—*Resolved*, That the Committee on the Rights and Privileges, etc., be instructed to inquire into the expediency of reporting a provision, extending to widows the right of tenancy by courtesy in all cases where the law, under like circumstances, would have given the same right to their husbands. Milroy (p. 327).

33. Widow's Portion.—*Resolved*, That the Committee on Rights and Privileges inquire into the expediency of reporting a section in substance as follows, for the new Constitution: A married woman residing in this State at the time of her husband's death, shall have the right to claim, free and discharged from his debts, a portion of his estate not to exceed in value the sum of two hundred dollars, and, in addition thereto, the one-half of the remaining balance of his estate, after the payment of his debts and expense of settling said estate, in such way as may be prescribed by law. Robinson (p. 368).

34. Responsibility for Debt, Default or Miscarriage—*Resolved*, That a select committee be appointed to inquire into the expediency of engrafting the following section in the new Constitution, to-wit:

Section —. No man shall be held to answer for the debt, default, or miscarriage of any other person upon any contract entered into from and after the year 1860, except in cases where executors, administrators, guardians, trustees, and public officers are required to give bond and security, and where security is given to persons acting in a fiduciary capacity. Hall (p. 371).

35. Sale of Property on Execution—*Resolved*, That the Committee on the Legislative Department be instructed to inquire into the expediency of providing, by a section in the Constitution, that real estate shall not be sold under execution for less than two-thirds its appraised value, and that personal property shall not be sold for less than one-half its appraised value. Pepper of Ohio (p. 444).

36. Holding Two Offices—*Resolved*, That the Committee on Miscellaneous Provisions inquire into the propriety of reporting the following section:

Section —. No person who shall have been elected to, and accepted any civil office of profit under this State shall be eligible to any other office of profit during the continuance of the term for which he may have been elected: Provided, That this section shall not be construed to extend to persons elected or appointed to any township, town, or municipal office. Homan (p. 497).

37. New County Created out of Spencer and Perry—*Resolved*, That the Committee on Miscellaneous Provisions be instructed to inquire into the expediency of reporting a section to be incorporated in the schedule, granting to the citizens of Spencer and Perry counties the power to create a new county out of contiguous territory of the respective counties, whenever a majority



of the legal voters of said counties respectively petition the legislature therefor. Graham of Warrick (p. 499).

38. Boundaries of the State—*Resolved*, That the Committee on Miscellaneous Provisions report to this Convention (if deemed expedient) an article to be taken from the authentic record, defining the boundaries of this State, to form an article in the new Constitution. Smiley (p. 500).

39. Boundaries of Blackford, Delaware, Grant, Ohio and Switzerland Counties—*Resolved*, That the Committee on Miscellaneous Provisions be requested to inquire into the expediency of reporting a clause authorizing a change in the boundaries of Blackford, Delaware, and Grant counties, whenever a majority of the voters of any territory belonging to one of those counties desire to be attached to one of the other counties; also, as to Ohio and Switzerland counties. Milligan (p. 500).

40. Destitute Orphans—*Resolved*, That the Committee on Public Institutions of the State be instructed to inquire into the propriety of amending the new Constitution so that a section may be introduced making provision for the support and education of destitute orphan children. Foster (p. 554).

41. Rates of Interest—*Resolved*, That a select committee of five members be appointed to inquire into the expediency of incorporating in the new Constitution the following section:

Sec. —. Laws shall be passed regulating and fixing the rate of interest; but no penalty or forfeiture shall be imposed by law, for contracting for, or receiving on money actually loaned by individuals in their private capacity, a greater amount of premium than the rate fixed by law, whenever the same shall be indicated by written agreement for the payment thereof, not exceeding ten per cent per annum. Laid on the table by a vote of 84-39. Thornton (p. 604).

42. General Statistics—*Resolved*, That the Committee on Miscellaneous Provisions be instructed to inquire into the expediency of reporting a section for the new Constitution, in substance as follows:

Sec. —. The number of inhabitants in the several counties of this State, together with the agricultural, manufacturing, and other general statistics thereof, shall be taken in the year 1855, and every ten years thereafter, and furnished to the Secretary of State in such manner as may be prescribed by law. Hawkins (p. 605).

## (b) SUFFRAGE, TENURE OF OFFICE AND REMOVAL.

1. Popular Election of all Public Officers—*Resolved*, That judges, and all other officers shall be elected by the people. Hall (p. 26).

2. Limiting Tenure of Public Officers to Four Years—*Resolved*, That no officer shall be elected or appointed for a longer time than four years.<sup>17</sup> Moore (p. 32).

3. Eligibility of Public Officers to Re-election—*Resolved*, That clerks, auditors, treasurers, and sheriffs shall be ineligible to more than two terms in succession. Moore (p. 32).

4. Elections by Viva Voce—*Resolved*, That all elections shall be by viva voce. Moore (p. 32).

5. Date of General Elections—*Resolved*, That our general elections be held on the first Monday in October. Moore (p. 32).

6. Eligibility to but One Office—*Resolved*, That no man shall hold more than one office of trust and profit at the same time. Moore (p. 32).

7. Franchise Privileges of Naturalized Aliens—*Resolved*, That the Committee on the Elective Franchise inquire into the expediency of providing in the Constitution for the exercise of the right of suffrage, so that in no instance shall the exercise of that right depend upon the naturalization laws of Congress; and also to inquire into the propriety of allowing persons of foreign birth who shall have resided one year in this State, declared their intentions to become citizens of the United States (or denizens of this State), and taken an oath of allegiance to our own and abjuration of all foreign governments, the privilege of voters. Borden (p. 48).

8. Popular Election of all Public Officers—All officers to be elected by the people. Foley (p. 49).

9. Date of General Elections—General elections to be held on the first Tuesday in October, instead of the first Monday in August. Foley (p. 49).

10. Eligibility to but One Office—No person to be allowed to hold two offices of honor and profit at the same time, as is now the case as to the clerk and recorder's office. Foley (p. 50).

11. Maximum and Minimum Salaries for Public Officers and Abolition of Perquisites—*Resolved*, That the Committee on Salaries, etc., be directed to inquire into the expediency of fixing, so far as practicable, minimum and maximum rates for the salaries

17. On October 25, an attempt by McClelland to amend this resolution limiting the tenure of office to three years was defeated by the Convention (p. 135).

of all legislative, executive, and judicial officers; and further, as to the expediency of abolishing, as far as practicable, all perquisites and privileges which may now be attached to any office. Chapman (p. 61).

12. Popular Election of Supreme Court Clerk and Reporter—*Resolved*, That the Committee on State Officers inquire into the expediency of providing in the Constitution for the election, by the people, of a clerk and a reporter of the Supreme Court. Kent (p. 61).

13. Suffrage Qualifications—*Resolved*, That the Committee on Elective Franchise and the Apportionment, be instructed to inquire into the expediency of engrafting a clause in the Constitution, so that in all elections not otherwise provided for by this Constitution, every white male citizen of the United States, of the age of twenty-one years and upwards, who has resided in this State six months immediately preceding such election, shall be entitled to vote in the county where he resides, except such as shall be enlisted in the armies of the United States or their allies. Harbolt (p. 62).

14. Removal of Public Officers by Grand Jury Presentment and Jury Trial—*Resolved*, That the Committee on Impeachment and Removals from Office be instructed to inquire into the expediency of providing in the Constitution that all county officers, for wilful neglect of duty or misdemeanors in office, shall be liable to presentment or indictment, by a grand jury or otherwise, and trial by a petit jury, and upon conviction be removed from office. Hardin (p. 63).

15. Denying Right of Franchise to Idiots, Insane, and Criminals—*Resolved*, That the Committee on the Elective Franchise be requested to report a clause or section, prohibiting to any idiot or insane person, or any person convicted of an infamous crime, the exercise of the elective franchise. Brookbank (p. 65).

16. Suffrage Qualifications, Prohibiting Criminals and Negroes from Voting—*Resolved*, That the Committee on the Elective Franchise and the Apportionment of Representation, be instructed to report a provision to be inserted in the Constitution, providing that in all elections every white male inhabitant over the age of twenty-one, having resided in this State one year next preceding any election, shall be entitled to vote at such election in the county where he resides, unless he shall have been convicted of some crime deemed infamous by law; and also to report a provision to be inserted in the Constitution prohibiting the legislature from



passing any law extending the right of suffrage to negroes and mulattoes; *Provided*, That no alien shall be permitted to vote until one year after he shall have declared his intention to become a citizen of the United States pursuant to the acts of Congress in such cases made and provided.<sup>18</sup> Lockhart (p. 65).

17. Date of General Elections—*Resolved*, That the Committee on Elections be instructed to inquire into the expediency of incorporating a clause in the Constitution fixing the time for the holding of our annual elections on the first Tuesday in October. Mowrer (p. 66).

18. Impeachments by Circuit Courts—*Resolved*, That in our amended Constitution we provide that all impeachments be transferred to and tried by the circuit courts in each county respectively. Wolfe (p. 68).

19. Guaranteeing Right of Suffrage to White Emigrants Resident in State Six Months—*Resolved*, That the Committee on Elections be instructed to inquire into the expediency of engrafting a provision in the Constitution, that all white emigrants to this State becoming permanent settlers in any county, shall have a vote at all general elections, after being there six months. Moore (p. 74).

20. Fixing Date for Election of United States Senator—*Resolved*, That the Committee on the Legislative Department be instructed to inquire into the expediency of incorporating into the Constitution, a provision fixing a day for the election of a United States senator. Barbour (p. 74).

21. Election of Speaker by Popular Vote—*Resolved*, That the Committee on the Legislative Department be instructed to inquire into the propriety of so amending the Constitution that the Speaker of the House of Representatives shall be elected by the people. Ballingall (p. 75).

22. Abolition of Official Bonds and Substitution of Graduated Penalty—*Resolved*, That the Committee on Impeachments and Removals from Office be directed to enquire into the expediency of abolishing all official bonds and substituting therefor such penalty or imprisonment in the penitentiary as may be prescribed by law; which punishment shall be graduated according to the

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18. This resolution was offered on October 15 and under the rules laid over one day. It was taken up for consideration on October 19. On that day the proviso relating to the franchise of aliens was added on motion of the author, Mr. Lockhart. The following amendments to the resolution were submitted and promptly rejected: (1) By Mr. Cookerly to prescribe only 6 months instead of a year's residence to vote. (2) By Mr. McClelland to remove the franchise restriction against negroes and mulattoes.

degree of defalcation or malfeasance, as near as may be. Chapman (p. 76).

23. Referendum on Contested Elections—*Resolved*, That in our amended Constitution it be provided that all contested elections, as far as practicable, be referred back to the people and by them decided. Wolfe (p. 80).

24. Referendum on Removal of County Seats—*Resolved*, That the Committee on Miscellaneous Provisions inquire into the expediency of incorporating in the new Constitution a provision, that “no county seat shall be removed until the point to which it is proposed to be removed, shall be fixed by law, and a majority of the voters of the county, voting on the question, shall have voted in favor of its removal to such point.” Graham of Warrick (p. 86).

25. State and Local Elections on Even Date—*Resolved*, That the Committee on Elections be, and they are hereby instructed to inquire into the justice and expediency of inserting in the Constitution a clause securing to the legal voters of each county the right to vote for state and county officers on the day of the annual election at any precinct or place of holding such election in their respective counties. Robinson (p. 119).

26. Extension of Suffrage by Plebiscite—*Resolved*, That the Committee on the Elective Franchise and Apportionment be instructed to inquire into the expediency of providing, by a clause in the new Constitution, that a majority of the legal votes of this State, at a general election, by a direct vote upon the subject, may extend the right of universal suffrage, except negroes, mulattoes, and Indians.<sup>19</sup> Hawkins (p. 121).

27. Adjustment of Contested Elections by Local Tribunals—*Resolved*, That the Committee on the Elective Franchise and Apportionment of Representation inquire into the expediency of engrafting a provision in the amended Constitution requiring the legislature to enact a law providing to try contested elections of members of the legislature before some constituted tribunal of the proper county, in time to secure to the rightful member his seat

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19. Mr. Hovey proposed an amendment to the resolution prohibiting the extension of suffrage to negroes, mulattoes and Indians, being the last five words of the resolution; Mr. Colfax moved to lay the amendment on the table and the Convention refused to concur by a vote of 36-105. The matter was then postponed (p. 121). On October 25, Mr. Hovey's amendment was taken up and adopted by a vote of 103-25 (p. 130).

at the commencement of the session to which he may be elected. Smiley (p. 144).

28. Election of State Librarian—*Resolved*, That the Committee on State Officers other than the executive and judiciary, be instructed to inquire into the expediency of engrafting in the new Constitution a section providing for the election of a state librarian by the qualified voters of the State. Read of Clark (p. 159).

29. Election of County Officers—*Resolved*, That the Committee on County and Township Organizations, powers, and officers, be instructed to inquire into the expediency of providing in the new Constitution for the election of all county officers. Moore (p. 159).

30. Impeachment of Local Officers by Circuit Courts—*Resolved*, That the Committee on Impeachments and Removals from Office, be instructed to report a section to be engrafted into the new Constitution, providing that all county and township officers be impeachable by the Circuit Courts of the proper county, and state officers by the legislature. Sims (p. 227).

31. Payment of Tax Necessary Qualification for Voting—*Resolved*, That the Committee on the Elective Franchise inquire into the expediency of inserting in the new Constitution a clause requiring all legal voters to give satisfactory evidence to inspectors of election of having paid state, county, or poll tax, within two years preceding such application to vote for state, county or township officers. Hitt (p. 227).

32. Election of Warden of State Prison by Popular Vote—*Resolved*, That the Committee on State Officers, other than the executive and judiciary be instructed to report a section for the election of a warden for the state prison, by the qualified voters of the State. Moore (p. 228).

33. Resignation and Re-eligibility—*Resolved*, That the Committee on Miscellaneous Provisions inquire into the expediency of introducing a clause into the Constitution, that no person accepting office under the laws of this State and afterwards resigning the same, shall be eligible to any other office in the gift of the people or legislature of this State, until the expiration of the term of time for which he was elected to the office he resigned. Hamilton (p. 228).

34. Election of State Printer by Popular Vote—*Resolved*, That the Committee on State Officers, other than executive, etc.,



be instructed to inquire into the expediency of electing a state printer by a direct vote of the people. Bascom (p. 229).

35. Detachment from County on Vote of People—*Resolved*, That the Committee on County and Township Organization, powers and officers, be instructed to inquire into the expediency of reporting a provision to be inserted in the Constitution, providing that the inhabitants of any portion of contiguous territory in this State, not to include less than ten square miles, may, at any time, by a unanimous vote of all the voters residing in said territory, detach themselves from any county and attach themselves to any other contiguous county: Provided, that three months' notice shall be given of the intention to take said vote: Provided, also, that no territory shall be taken from any county within ten miles of the county seat of such county. Milroy (p. 229).

36. Removal of Local Officers by Impeachment—*Resolved*, That the Committee on Impeachment and Removals from Office, be requested to inquire into the expediency of so amending the Constitution, that all county and township officers shall be liable to impeachment in such manner as the General Assembly may direct by law. Tague (p. 230).

37. One Representative for Each County—*Resolved*, That the Committee on the Elective Franchise and Apportionment, be instructed to inquire into the expediency of providing that in the House of Representatives of the General Assembly, each county shall have at least one representative. Kendall of White (p. 231).

38. Election of Penitentiary Chaplain by Popular Vote—*Resolved*, That the Committee on the Elective Franchise be instructed to inquire into the expediency of inserting in the Constitution a provision for the election of the chaplain to the penitentiary, by the people. Gregg (p. 231).

39. Election of Wabash and Erie Canal Trustees by Popular Vote—*Resolved*, That the Committee on State Officers other than executive and judicial, report a section for the new Constitution, making the trustees on the part of the State, in the board of trustees of the Wabash and Erie Canal, elected by the people. Bracken (p. 232).

40. Extension of Suffrage to Tax-Paying Indians and Mulattoes—*Resolved*, That the Committee on the Rights and Privileges of the inhabitants of this State, be instructed to inquire into the expediency of extending the elective franchise to all tax paying

Indians and mulattoes, having no more than one-eighth negro blood. Helmer (p. 232).

41. Residential Qualifications for Suffrage—*Resolved*, That the Committee on the Elective Franchise be instructed to inquire into the expediency of reporting a clause to be inserted in the new constitution requiring a bona fide residence in the county, and a residence of three months within the State to entitle an elector to vote. Chandler (p. 232).

42. Excluding from Suffrage Persons Convicted of Bribery, Larceny, or Crime—*Resolved*, That the Committee on the Elective Franchise, etc., be instructed to inquire into the expediency of inserting an article in the amended constitution, requiring the legislature to pass laws excluding from the rights of suffrage all persons who have been, or may be, convicted of bribery, of larceny, or any infamous crime; or for depriving every person who shall make, or become directly or indirectly interested in any bet or wager depending upon the result of any election, from the right to vote at such election. Milroy (p. 287).

43. Date of Electing Congressmen—*Resolved*, That the Committee on Elections inquire into the expediency of providing that in all elections for members of Congress hereafter, the election shall take place at least one year previous to the assembling of the Congress of which they may be elected a member. Work (p. 368).

44. Counties Below Ratio of Representation—*Resolved*, That the Committee on the Elective Franchise and the Apportionment of Representation be requested to inquire into the expediency of giving to counties not having the ratio of representation, the residuum or residuums of adjoining counties, so as to entitle such counties to a Representative. Tembly (p. 369).

45. Judicial and Representative Districts—*Resolved*, That the Committee on Apportionment inquire and report, whether it will be the business and duty of this Convention to district the State for judicial and representative purposes, and if so, to report an article to this Convention, providing for such districting, with as little delay as may be convenient. Smith of Ripley (p. 370).

46. Tenure of Existing County Offices—*Resolved*, That the Committee on Miscellaneous Provisions be instructed to report a section for the new constitution, providing that all county officers shall continue to hold their respective offices after the adoption of the amended constitution, until the expiration of their several terms, provided no officer shall continue in office after the adoption of the new constitution for a longer time than a term of

the office under the same. Hendricks. Adopted by a vote of 93-28 (pp. 371, 443). A similar resolution was submitted by Reed of Monroe relative to state officers (p. 444).

47. Pilots at the Falls of the Ohio—*Resolved*, That the Committee on County and Township Organization, etc., be requested to report an article in relation to the tenure of office, or appointment of pilots at the Falls of the Ohio at Jeffersonville, in this State. Watts (p. 447).

48. Review of Contested Elections—*Resolved*, That the Committee on the Elective Franchise, be instructed to inquire into the expediency of reporting a section to be inserted in the amended constitution, requiring the General Assembly to pass laws empowering boards of canvassers to hear and determine all contested elections for seats in the General Assembly, and for all county officers, and to provide a mode by which appeals may be taken from the decisions of said board to the circuit courts, and also empowering such courts and such boards, when justice cannot otherwise be done, to refer such elections back to the people. Milroy (p. 447).

49. Minimum Salary of Constitutional Officers—*Resolved*, That the Committee on Salaries, Compensation, and Tenure of Office, be instructed to inquire into the expediency of reporting a section fixing a minimum to salaries of all constitutional offices in this State. Milroy (p. 711).

50. Beginning of Terms of Office—*Resolved*, That the Committee on Salaries, Compensation, and Tenure of Office, report for the action of the Convention as soon as practicable, a section for the new constitution fixing the time when the term of office shall commence of Governor, Lieutenant-Governor, Supreme and circuit Judges, members of the legislature, and of all State and county officers. Smiley (p. 781).

(c) ADMINISTRATION OF JUSTICE AND THE JUDICIARY.

1. Proceedings in Law and Equity—*Resolved*, That all distinction between proceedings in courts of law and equity shall be abolished, as also all distinction between different kinds of action. Hall (p. 26).

2. Abolition of Capital Punishment—*Resolved*, That a select committee, to consist of seven members, be appointed by the President to inquire into the expediency of abolishing capital punishment by constitutional provision, and that they report the result of their deliberations to this Convention. Kelso (p. 32).



3. Abolition of Technicalities and Special Pleadings—*Resolved*, That the technicalities and special pleadings in our courts of justice be abolished. Moore (p. 32).

4. Abolition of Grand Jury System—*Resolved*, That the grand jury system be abolished.<sup>20</sup> Moore (p. 32).

5. Abolition of Associate Judgeships—Associate Judges of circuit courts dispensed with. Foley (p. 50).

6. Abolition of Grand Jury System and Substitution of Public Examinations—*Resolved*, That the Committee on Organization of Courts of Justice be instructed to report a provision for the constitution abolishing the grand jury system, and substituting public examinations in its place.<sup>21</sup> Pettit (p. 60).

7. Jury to Find Upon Facts of Issue Only—*Resolved*, That the Committee on the Organization of Courts, etc., enquire into the expediency of engrafting on the constitution a provision that the jury in criminal cases find upon the facts of the issue only; and that the courts apply the penalty and punishment in case of conviction. Perry (p. 60).

8. Supreme Judicial Election Districts—*Resolved*, That the Judiciary Committee be instructed to inquire into the expediency of providing in the constitution, for the districting of the State into the necessary number of supreme judicial districts, and the election of one supreme judge from each district and report the same to this Convention as soon as practicable. Prather (p. 65).

9. Membership of Supreme Court and Reporting Decisions—

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20. On October 25, on motion of Pettit, this resolution was laid on the table (p. 136).

21. On October 21, Pettit's grand jury resolution was taken up. Bascom submitted but subsequently (October 22), withdrew a substitute, "That the Committee on the Organization of Courts of Justice be instructed to inquire into the expediency of changing the present grand jury system" (p. 114). On October 22, Pettit proposed an amendment to his own resolution "That the General Assembly may, after the expiration of five years, restore the grand jury system", and Holman proposed an amendment: (1) That the public will should not be restricted by unnecessary limitations of the legislative power. (2) That the manner of preferring, and the mode of prosecuting a criminal accusation, are matters purely legislative, and should be left to the legislative department of government. (3) That the Committee on Criminal Law be instructed to omit the words "indictment", "presentment", or "impeachment", where the same occur in Sections 12 and 13, of Article 1st, of the old Constitution (pp. 115-17, 122, 124, 130). Without coming to any conclusion, the matter was postponed till November 4. On that day, the resolution and proposed amendment were referred to a select committee to report on the following points: (1st) Are presentments and indictments judicial proceedings according to the course of the common law? (2nd) If so, to abrogate the grand jury system, would not the same violate the 2d article of the compact of the 13th of July, 1787, which guarantees the benefit of judicial proceedings according to the course of common law to the inhabitants of this State? (3d) Are not said articles of compact confirmed and ratified by the Federal Constitution, and binding upon the people of this State? (pp. 190-91). Further action seems to have been postponed.

*Resolved*, That the Committee on the Organization of the Courts of Justice be directed to inquire into the expediency of providing for the election of five judges of the Supreme Court, and the propriety of prohibiting said judges, or either of them, from reporting the decision of said court. Hovey (p. 65).

10. Consolidation of Circuit and Probate Courts—*Resolved*, That the Committee on the Organization of Courts be instructed to inquire into the expediency of so organizing the circuit courts of this State, that the judges of these courts shall also be the judges of the probate courts. Nofsinger (p. 65).

11. Abolition of Capital Punishment—*Resolved*, That it be referred to the Committee on the Rights and Privileges of the inhabitants of this State, to inquire into the expediency of so amending the 16th section of our present bill of rights, so as to read as follows: All penalties shall be proportioned to the nature of the offense, but no penalty shall extend further than fine and imprisonment. The penalty of death shall in no case be inflicted. Milroy (p. 66).

12. County Courts of Probate and Administration—*Resolved*, That the Committee on the Organization of Courts inquire into the expediency of inserting the following provision in the Constitution. There shall be established in each county of the State a court of record, to be called the county court, to be holden by one judge to be elected by the voters of the county, with jurisdiction in habeas corpus, of probates, and administration, the issuing and revocation of letters testamentary, letters of administration and guardianship, the settlement of accounts of executors, administrators, and guardians, and of matters in relation to the sale of lands by executors, administrators, and guardians, and full jurisdiction in all matters in relation to the administrators and guardians, and such original and appellate jurisdiction in civil cases as may be provided by law. The term of office of county judge shall be four years, and he shall act as his own clerk, and receive such fees and compensation as may be allowed by law. Clark of Hamilton (p. 66).

13. Abolition of Capital Punishment—*Resolved*, That the Committee on Criminal Law inquire into the expediency of inserting in the Constitution, a clause abolishing the penalty of death. Kinley (p. 67).

14. Verdicts in Civil Actions by Three-Fourths of Jury—*Resolved*, That the Committee on the Organization of the Courts of Justice be instructed to inquire into the expediency of incorp-

orating in the Constitution a provision that in all issues in civil actions submitted to petit juries, a verdict may be rendered by a majority of three-fourths of the jury. Dunn of Jefferson (p. 68).

15. Reducing Number of Petit Jurors in Civil Cases, Less than Whole for Verdict in Civil Causes and Felonies—*Resolved*, That the Committee on the Organization of Courts be instructed to inquire into the expediency of so amending the Constitution, as that the legislature shall have the power of reducing the number of petit jurors in civil causes, and upon trials for misdemeanors, and that a less number than the whole may find a verdict in such causes, and that a less number than the whole may find a verdict of acquittal in trials for felonies. Hendricks (p. 70).

16. Commissioners to Revise Rules of Judicial Procedure—*Resolved*, That the Committee on the Practice of Law and Law Reform be requested to enquire into the expediency of so amending the Constitution, that it shall require the legislature, at its first session after the adoption of the new Constitution, to appoint three commissioners whose duty it shall be to revise, simplify, reform and abridge the rules and practice, pleadings and forms of proceedings of courts of record in this state, and report their proceedings to the legislature for their adoption, modification or rejection.<sup>22</sup> Allen (p. 71).

17. Abolition of Associate Judgeships—*Resolved*, That the Committee on the Organization of Courts of Justice be instructed to enquire into the expediency of so amending the Constitution as to dispense with the associate judges. Edmonston (p. 72).

18. Prohibiting Trials on Criminal Charges Without Hearing—*Resolved*, That it be referred to the Committee on the Rights and Privileges of the inhabitants of this State, to inquire into the expediency of so amending the 12th section of our present bill of rights as to read as follows: That no person arrested or confined in jail shall be treated with unnecessary rigor, or be put on trial upon any criminal charge without first having a fair public opportunity offered him or her to be present with attorney and witnesses to repel or refute the charge in its inception. Milroy (p. 72).

19. Testimony in Equity Causes—*Resolved*, That the Committee on the Practice of the Law and Law Reform be instructed

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22. An amendment to this resolution, proposed by Mr. Badger, "That the Committee on the Practice of Law and Law Reform be required to report a provision in the Constitution requiring the legislature, during its first session after the new Constitution is adopted, to pass a law, the object of which shall be to simplify the statutory system" was rejected.



to so amend the Constitution, that the testimony in all causes in equity shall be taken in like manner as in suits at law. Nave (p. 72).

20. Abolishing Supreme Court and Providing Substitute—*Resolved*, That the Committee on the Organization of Courts of Justice, etc., be instructed to inquire into the expediency of amending the Constitution abolishing the Supreme Court as at present organized, and proposing a suitable substitute therefor, whereby a speedy and impartial trial of all appeals and writs of error taken to said court (to be substituted) may be had. Nave (p. 78).

21. Prohibiting Suit Against the State—*Resolved*, That the Committee on Legislation be instructed to inquire into the expediency of engrafting a clause on the Constitution, prohibiting the legislature from passing any law authorizing a suit to be brought against the State, in its charter as a sovereign State. Holman (p. 78).

22. Commission on Revision and Codification, Actions at Law and Equity—*Resolved*, That the Committee on the Practice of the Law and Law Reform be instructed to inquire into the expediency of providing in the Constitution, that the General Assembly, at the first session thereof after the adoption of the Constitution, shall appoint not less than three nor more than five commissioners whose duty it shall be to revise, reform, simplify and abridge the rules and practice, pleadings, forms and proceedings of the courts of this State, and they shall provide for the abolition of the distinct forms of actions at law now in use, and that justice shall be administered in a uniform mode of pleading without reference to any distinction between law and equity. And it shall also be the duty of said commissioners to reduce into a written and systematic code, the whole body of the law of this State, or so much and such parts thereof, as the said commissioners shall find practicable, and expedient; and that said commissioners shall, from time to time, report the results of their labors to the General Assembly for the revision and approval of the same. Borden (p. 86).

23. Suits Against State—*Resolved*, That the Committee on the Organization of the Courts of Justice be instructed to inquire into the expediency of permitting state creditors to sue the State in all cases where the contract may be made subsequent to the adoption of the proposed Constitution, in any court of competent jurisdiction. Wiley (p. 87).

24. Permitting Suits Against State but Prohibiting Special

Laws or Tribunals Therefor—*Resolved*, That the Committee on the Legislative Department be instructed to inquire into the expediency of introducing into the Constitution a provision to the effect following: That in order to determine the legal validity of claims against the State, the State shall be suable in its own courts as individuals, but special laws allowing suits against the State shall not be passed, nor shall special tribunals deciding such suits be established. Read of Monroe (p. 87).

25. Election or Appointment of Attorney-General and Prosecuting Attorneys—*Resolved*, That the Committee on the Organization of Courts of Justice be instructed to inquire into the expediency of inserting into the Constitution a provision for the election or appointment of an attorney-general and also prosecuting attorneys for the several judicial circuits. Terry (p. 120).

26. Minimum Salary for Judges of Supreme and Circuit Courts—*Resolved*, That the Committee on Salaries, Compensation, and Tenure of Office, be instructed to inquire into the expediency and propriety of fixing, by constitutional provision, a minimum salary for the judges of the Supreme Court and the president judges of the circuit courts, below which the same shall at no time be reduced. Kelso (p. 135).

27. County Surrogates—*Resolved*, That the Committee on the Organization of Courts of Justice be instructed to inquire into the expediency of reporting a clause embracing the following principles, to-wit: 1. There shall be elected in each county, by the qualified voters thereof, a surrogate who shall hold his office for three years, and until his successor is elected and qualified; he shall have exclusive jurisdiction in all matters pertaining to the probate of wills, the granting of letters testamentary, of administration, and of guardianship, and in the settlement of decedents' estates, and concurrent jurisdiction with the Circuit Court in all cases in which executors, administrators, guardians, and heirs as such are parties, and shall have such other powers, and exercise such other jurisdiction as the legislature may by law direct. 2. The surrogate shall be his own clerk, and shall hold a Court at least six times in each year for the trial of causes pending therein, and for the settlement of decedents' estates.<sup>23</sup> Holman (p. 136).

28. Circuit Probate Courts—*Resolved*, That the Committee

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23. The original resolution was introduced by Smith of Ripley as follows: *Resolved*, That the Committee on the Organization of Courts, etc., be instructed to inquire into the expediency of constituting a Probate Court in and for each county, with one judge, who shall be his own clerk. To this Holman proposed an amendment, as given in the text, which Smith accepted.

on the Organization of Courts of Justice be instructed to inquire into the expediency of engrafting in the Constitution a provision creating a circuit probate court. Alexander (p. 143).

29. Term and Election of Supreme Court Judges; Re-eligibility—*Resolved*, That the Committee on the Practice of Law and Law Reform be instructed to enquire into the expediency of making the judges of the Supreme Court elective by the people for a term of six years, and re-eligible without limitation as to age. After the first election the judges to be divided into three classes, the seats of the first class to be vacated at the end of two years, the seats of the second class to be vacated at the end of four years, and the seats of the third class to be vacated at the end of six years. Read of Clark (p. 144).

30. Restricting Power of Grand Jury—*Resolved*, That the Committee on Criminal Law be, and they are hereby instructed to report to the Convention a section to be incorporated in the new Constitution as follows:

Section —. That no person shall be put to answer any criminal charge of a capital character, nor any criminal charge the punishment whereof is or may be confinement in the State Prison or county gaol, but by presentment or indictment by a grand jury: Provided however, That the grand jury shall have no power to present or indict any person for any crime or petit misdemeanor below the grade above referred to; but the same shall be punished in such way and manner as the legislature may prescribe. Robinson (p. 145).

31. Restrictions on Change of Venue—*Resolved*, That the Committee on Criminal Law be instructed to inquire into the expediency of restraining within proper limits the right of criminals to a change of venue from the county in which the offense was committed, and that they report such restrictions as they may deem necessary. Gibson (p. 145).

32. Presentment, Indictment or Impeachment—*Resolved*, That the Committee on the Organization of Courts of Justice be instructed to inquire into the expediency of inserting into the Constitution a provision that no person shall be held to answer any criminal or other infamous crime unless on presentment, indictment, or impeachment. Terry (p. 146).

33. Authorizing Courts to Vacate Streets, Alleys, Villages and Towns—*Resolved*, That the Committee on County and Township Organization be instructed to inquire into the expediency of clothing the county or circuit courts with power to vacate any



village, town, street, or alley, or any part thereof, that is situated in any county in this State, by petition, by making compensation, etc. Wolfe (p. 158).

34. Judicial Agencies—*Resolved*, That the Committee on the Organization of Courts of Justice be instructed to inquire into the expediency of providing in the Constitution, that the judicial power of this State shall be vested in 1st. A Supreme Court, 2nd. Circuit Courts, 3d. Justices of the Peace. Provided the legislature may also vest such civil and criminal jurisdiction in the mayors of the incorporated cities of this State, as may be deemed necessary and proper, but such criminal jurisdiction shall not extend to capital offenses, or crime punished by confinement in the State Prison.

The Supreme Court shall be composed of five judges who shall be chosen by the electors of the State, and shall serve for —— years. The State shall be divided into five judicial districts of contiguous territory, in each of which district one of said judges shall reside. Provision shall be made by law for designating one of the number a Chief Justice, and for so classifying said judges that one of them shall be elected every year.

The State shall be divided from time to time, as the exigencies of the same may require, into judicial circuits of contiguous territory. One judge shall be elected in each circuit by the qualified electors therein to serve for six years. At least three terms of the circuit court shall be held in each county annually.

The qualified electors in the several townships shall, at their annual spring election, elect justices of the peace, whose terms of office shall be for three years. These shall be three in number in each township, and shall be so classified that one of them shall go out of office each year.<sup>24</sup> Borden (p. 158).

35. Restricting Capital Punishment and Defining Murder in the First Degree—*Resolved*, That the Committee on Criminal Law be instructed to inquire into the expediency of engrafting the following provision into the new Constitution: Capital punishment shall not be inflicted, except for high treason and murder in the first degree, and no person shall be put upon his trial for either of said crimes at the term at which any indictment may be found, nor shall any person convicted of either of such crimes be executed

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24. An amendment by Mr. Chapman "That the committee be instructed to inquire into the expediency of providing that the Supreme Court shall consist of four judges, to be elected by the people by districts, to hold their offices for the term of five years, to have appellate jurisdiction, and that it shall require the concurrence of three of the judges to reverse the judgment of the court below", was rejected.

until after the expiration of three months from the time of the conviction. The crime of murder in the first degree shall consist in the unlawful and felonious killing of any human being, with malice prepense and aforethought by any person of sound mind. Chapman (p. 228).

36. Changing Judicial Districts—*Resolved*, That the Committee on Law Reform be instructed to inquire into the expediency of engrafting into the new Constitution a section prohibiting the legislature from changing the judicial districts and circuits of this State, except at the first session after every enumeration, unless when new districts may be established. Read of Clark (p. 230).

37. Conciliation of Legal Controversies—*Resolved*, That the Committee on the Practice of Law and Law Reform, be instructed to inquire into the expediency of having provision made in the Constitution for the conciliation of legal controversies, as a part of the administration of the law of the land. March (p. 230).

38. Majority Verdict of Jury in Criminal Trials—*Resolved*, That the Committee on Criminal Law inquire into the expediency of inserting a clause in the Constitution, providing that in all criminal trials, a majority of the jury may render a verdict of acquittal. Kent (p. 233).

39. Abolishing the English Common Law—*Resolved*, That the Committee on Law and Law Reform report an article to this Convention as soon as practicable, for the purpose of abolishing the common law of England. Tague (p. 276).

40. Constituting Embezzlement of Public Funds a Felony—*Resolved*, That the Committee on Criminal Law be instructed to report a section to the following effect: Embezzlement of public funds by any public officer, shall be deemed a felony, and shall be subject to such punishment as the General Assembly shall prescribe. Chapman (p. 326).

41. Guaranteeing Accused Closing Argument—*Resolved*, That the Committee on Criminal Law inquire into the expediency of reporting an amendment to the Constitution, giving the right to all persons arraigned for crime, the closing argument before the court or jury trying the same. Ristine (p. 371).

42. Prison Discipline and Juvenile Reformation—*Resolved*, That a select committee of one from each Judicial Circuit be appointed to inquire into the expediency of incorporating a provision in the Constitution providing a reform in prison discipline, and for the erection of houses of correction for the punishment and reformation of juvenile offenders. Lockhart (p. 379).

43. Jurisdiction of Justices of the Peace—*Resolved*, That the Committee on County and Township Organization, powers and officers, be requested to inquire into the expediency of preparing and reporting a section for the new Constitution, giving to justices of the peace cognizance of all petit misdemeanors, and extending their jurisdiction in criminal and civil cases, drawing a line of demarcation between criminal cases which the justice may be authorized to determine, and cases to be by him recognized to a higher court, subject in all cases (that he may determine) to an appeal. Smiley (p. 446).

44. Abolition of Capital Punishment—*Resolved*, That the Committee on Criminal Law be instructed to inquire into the expediency of inserting in the new Constitution, the following:

Sec. —. That the highest punishment to be inflicted for crime shall be confinement in the State prison for life. Thornton (p. 555).

45. Abolishing Distinctions in Character of Evidence—*Resolved*, That the Committee on the Practice of Law and Law Reform be instructed to inquire into the expediency of abolishing all distinctions in the character of evidence that may be admitted or rejected in courts of justice, on account of interest in the subject matter of the suit. Milroy (p. 606).

46. Qualifications for the Practice of Law—*Resolved*, That the Committee on the Practice of Law and Law Reform, be instructed to report a section, that every free white male citizen of the age of twenty-one years, and of good moral character, shall be permitted to practice law in any and all the courts of this State, whether of record or not of record. Frisbie (p. 710).

47. Payment of Judges' Fees—*Resolved*, That the Committee upon Law and Law Reform be directed to report a section for the consideration of the Convention, embracing the following: That upon the commencement of any civil suit, there shall be paid to the proper officer an amount to be fixed by law, not more than three nor less than one per cent upon the amount sued for, for the purpose of paying judges' fees, etc., to be taxed up with the costs of suit. Shoup (p. 783).

(d) CORPORATIONS, BANKING INSTITUTIONS AND FINANCE.

1. Creation and Liability of Corporations, Banking Privileges—*Resolved*, That corporations shall be created under a general law; individual liability to the extent of stock shall be imposed; the issue of bills of credit for general circulation shall be



prohibited; no banking privileges shall be granted, except to a State Bank, and a limited number of Branches properly restricted. Hall (p. 26).

2. Referendum on Creation of Public Debts—*Resolved*, That the legislature shall be prohibited from borrowing money upon the faith of the State, without the consent of the people expressed through the ballot box. Hall (p. 26).

3. Application of Funds in Liquidation of State Debt—*Resolved*, That the funds arising from the sale of all our public works, water rents, etc., be sacredly applied to the liquidation of the state debt.<sup>25</sup> Moore (p. 32).

4. Contingent Appropriations, Limitation of Debt, Referendum on all but Emergency Debts—*Resolved*, That the Committee on ——— be instructed to report a section requiring that each General Assembly shall provide for all the appropriations necessary for the ordinary contingent expenses of the government until the next regular session, the aggregate amount of which shall not exceed the amount of revenue authorized by law to be raised in such time: Provided, The State may, to meet casual deficits in the revenues, contract debts never to exceed fifty thousand dollars; and the moneys thus borrowed, shall be applied to the purpose for which they were obtained, and to no other purpose; and no other debt, except for the purpose of repelling invasion, suppressing insurrection, or defending the State in war, shall be contracted, unless the law authorizing the same shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for members of the General Assembly at such election. The General Assembly shall provide for the publication of said law for three months at least before the vote of the people shall be taken upon the same, and provision shall be made at the time for the payment of interest annually as it shall accrue, by a tax levied for the purpose, and the law levying the tax shall be submitted to the people with the law authorizing the debt to be contracted. Pepper of Ohio (p. 33).

5. Prohibiting State Banks, Regulation of Fiat Money and Suspension of Specie Payments—*Resolved*, 1. That no State Bank shall hereafter be created, nor shall the State directly or indirectly ever become a stockholder in any incorporation or association created for the purpose of issuing paper money of any descrip-

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25. On October 25, Kilgore attempted to amend this resolution to provide that all funds contemplated should be applied to the support of common schools and not to the liquidation of the state debt, but the proposition was rejected by the Convention (p. 135).

tion—nor shall the State give or loan her credit in aid of any individual or incorporation for banking purposes.

2. That no person, association of persons, or corporation, shall put in circulation any bill, certificate, promissory note, or other paper, or the paper of any other bank, to circulate as money, without first having satisfied the legislature with good and sufficient pledges that such paper money shall be redeemed in specie on demand. And every such person, association, or corporation, shall be individually liable for the redemption of the whole amount of such circulation; nor shall any such person, association of persons, or corporation issue notes or paper money of a less denomination than ten dollars.

3. The legislature shall have no power to pass laws for the suspension of specie payments in behalf of any individual, association, or incorporation issuing paper money of any description. Dick (p. 48).

6. Prohibiting Special Bank Charters, Suspension of Specie Payments, Registration of Bills and Notes, Individual Liability and Creditors—*Resolved*, That the Committee on Currency and Banking be instructed to inquire into the expediency of inserting in the Constitution the following sections, to-wit:

Section 1. The legislature shall have no power to pass any act granting any special charter for banking purposes, but corporations or associations may be formed for such purposes, under general laws.

Sec. 2. The legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments by any person, association, or corporation issuing bank notes of any description.

Sec. 3. The legislature shall provide by law for the registering of all bills or notes issued or put in circulation as money and shall require ample security for the redemption of the same in specie.

Sec. 4. The stockholders in every corporation and joint stock association for banking purposes, issuing bank notes or any kind of paper credits to circulate as money after the first day of January, 1852, shall be individually liable to the amount of their respective share or shares of stock in any such corporations or associations for all its debts and liabilities of every kind, contracted after the first day of January.

Sec. 5. In case of the insolvency of any bank or banking association, the bill holders thereof shall be entitled to preference

in payment over all other creditors of such bank or association. Read of Clark (p. 49).

7. Referendum on all but Emergency Taxation—No tax to be levied by an act of the legislature, except to carry on and support the state government, unless such tax is first submitted to a separate and direct vote of the people and by them authorized; existing charitable institutions to be excepted from this rule. Foley (p. 50).

8. Referendum on all but Emergency Debts—An express provision against allowing the legislature to borrow money excepting in time of war, or for public defence, without first submitting it to the people. Foley (p. 50).

9. Abolition of Poll Tax—*Resolved*, That the Committee on Finance and Taxation be instructed to inquire into the expediency of abolishing the poll tax. McClelland (p. 60).

10. Modified Re-charter of State Bank or Establishment of Independent Banks—*Resolved*, That the Committee on Currency and Banking be requested to inquire into the expediency of providing in the new Constitution that the legislature shall have power to re-charter the State Bank of Indiana, with such alterations and modifications as experience shall have suggested, or to establish independent banks on safe and sound principles, or both state and independent banks, as the people, in their discretion, shall think most conducive to their convenience and prosperity. Maguire (p. 61).

11. Abolition of State Bank—*Resolved*, That the Committee on Currency and Banking be instructed to report a provision that at the expiration of the charter of the present State Bank, all connection between the state government and banks shall cease. Pepper of Ohio (p. 62).

12. Prohibiting Banking Privileges—*Resolved*, That the Committee on Currency and Banking be requested to inquire into the expediency of prohibiting the legislature from passing any bank charter, or giving to any person or number of persons any banking privileges which are not extended to all the people of the State. Allen (p. 62).

13. Establishment of State and Private Banks, Security for Redemption and Individual Liability—*Resolved*, That the Committee on Banking be instructed to inquire into the expediency of introducing a clause into our Constitution giving to the legislature power to establish a State Bank and Branches, and also power to grant charters for private banking; Provided,



stocks of the United States or of the State of Indiana be deposited as security for the redemption of the paper issued by such private banks, the same to be lodged with an officer of the State, who shall, on receiving the stock, deliver blank bank paper, countersigned and registered, to an amount not to exceed the par value of the stock deposited: And provided also, That the stockholders be held individually liable for the final redemption of such paper as the bank may issue. Hamilton (p. 62).

14. Referendum on all but Emergency Debts—*Resolved*, That it be referred to the Committee on the State Debt and Public Works to inquire into and report on the expediency of incorporating into the Constitution, a provision that every law authorizing the borrowing of money or issuing of state stock, whereby a debt shall be created or increased on the credit of the State, shall specify the object for which the money shall be appropriated; and that every such law shall embrace no more than one such object which shall be single and specifically stated; and that no such law shall take effect until it shall be distinctly submitted to the people at the next general election, and be approved by a majority of the votes cast for and against it at such election; that all moneys to be raised by the authority of such law to be applied to the specific object stated in such law and to no other purpose whatever, except the payment of the debt hereby created and increased. This provision shall not interfere with any law to raise money for the purpose of suppressing insurrection, repelling invasion, or defending the State in war. Haddon (p. 64).

15. Prohibiting Issue of Bank Paper—*Resolved*, That the Committee on Currency and Banking inquire into the expediency of forever prohibiting the issue of bank paper in this State. Bascom (p. 67).

16. Authorizing Free Banking—*Resolved*, That the Committee on Currency and Banking be instructed to enquire into the expediency of inserting a provision in the Constitution authorizing free banking. Helm (p. 70).

17. Uniform Mode of Assessment and Taxation, Intrinsic Valuation of Real Property and Certification of all Taxable Incumbrances—*Resolved*, That the Committee on Finance and Taxation inquire into the propriety of inserting in the Constitution the following provisions: The legislature shall provide by law a uniform mode of assessment and taxation for the several counties in this State, and shall prescribe such regulations as will secure a due valuation of all property both real and personal; the esti-

mate of real estate to be made on its actual and intrinsic value as near as the same can be determined at the time, and that county clerks shall, upon the requisition of the assessors, county or township, annually, by the first Monday of March, give full return of all mortgages, liens, and incumbrances, on real estate, situate in their respective counties or townships, to enable the assessors justly to apportion, equalize, and assess the same. Logan (p. 72).

18. Referendum on Creation of Debt for Internal Improvements—*Resolved*, That the Committee on State Debt and Public Works be instructed to inquire into the expediency of denying to the legislature the power to contract debt, or engage the State in any internal improvement or public work, without first obtaining the consent of a majority of the people of this State, by a vote at a general election upon propositions distinctly stating the amount of money to be borrowed or debt to be contracted, and how it is to be paid, whether by taxation or otherwise, or the description of the internal improvement or public work, propose its probable cost, public benefit, and how it is to be paid for. Milroy (p. 78).

19. Compulsory Payment of Land Tax by Non-Residents—*Resolved*, That the Committee on Finance and Taxation inquire into the expediency of inserting a clause in the Constitution, enjoining it on the legislature, to make a law compelling non-resident owners of land to pay a land tax, equal to that paid by residents. Sims (p. 86).

20. County Referendum on Lending Credit to Corporations—*Resolved*, That the Committee on County and Township Organization, etc., be instructed to inquire into the expediency of inserting a clause in the Constitution prohibiting counties from taking stock in any corporation whatever, or lending their credit thereto in any manner whatever, without the sanction of a majority of the votes of said counties. Nofsinger (p. 120).

21. Legislative Power to Create Corporations, State Bank—The legislature shall have power to pass general laws under which individuals may incorporate themselves for any purpose as a body corporate, with such powers, privileges, and liabilities as the legislature may think proper to bestow and impose upon them; and after such incorporation under such general law, the rights and privileges of such corporation shall in no wise be diminished by legislation without the consent of the incorporators, and in all litigation wherein the rights and acts of such corporation may be involved, the same rules of construction and interpretation shall

be applied to corporate acts that are applied to the actings and doings of natural persons; but no bank, or any other pecuniary institution, with the functions to loan money, issue bills of credit, or receive deposits, or any of them, shall ever be incorporated under such general laws, without the stockholders thereof being individually liable for all the acts of such incorporation to the full amount of their stock.

*Resolved*, That the following be adopted as a substitute for Article 10, in the Constitution: The State Bank of the State of Indiana, with the consent of the board of directors thereof, shall continue to exercise and enjoy all and singular the functions and privileges bestowed upon it by its charter, and the amendments thereto, until the first of January, 1865, remaining in all other things as though its rights and functions had not been prolonged by this Constitution, except that the board of directors may increase the capital stock of the State in any Branch of said State Bank out of the funds set apart by the charter of said State Bank for the use of common schools to such amount as said board may think safe and profitable; and at the same time increase the individual stock of said Branch to the same amount, which increased stock shall be, in all things, as the original of said Branch, except that the legislature of the State, at any time after the creation of the state stock, out of the avails of the common school fund aforesaid, may direct a distribution of the profits upon said stock to purposes of common school education, or in aid of a sinking fund for the extinguishment of the state debt; and nothing herein contained shall prevent the legislature of the State, at any time after the first of January, 1862, from prolonging the charter of said State Bank, or from enlarging or diminishing the capital stock thereof, or from modifying its powers and liabilities by and with the consent of the board of directors thereof, or from rechartering another State Bank, with such capital powers and liabilities as the legislature may think proper to bestow upon it; and any time after the expiration of one year after the adoption of this Constitution by the people of the State, the legislature may provide for the incorporation of other banks within the State, with such capital, and such powers, franchise privileges, and liabilities as may be thought proper by the legislature: Provided, however, That no monied incorporation, in the nature of, or with any of the functions of a bank of issue, discount, or deposit, shall ever be granted by special act, or created under any general law, without making the stockholders thereof individually liable for all the liabilities of such



institution to the amount of the stock owned by such individual at the time such liability occurred. Rariden (p. 124).

22. Prohibiting Incorporation of Banks—*Resolved*, That in the opinion of this Convention, the interest of the people and the honor of the State demand that a provision be inserted in the Constitution prohibiting the legislature from incorporating any bank or banking institution in this State. Lockhart (p. 125).

23. Referendum on Internal Improvement Debts—*Resolved*, That the Committee on State Debt and Public Works be instructed to inquire into the expediency of inserting a provision in the Constitution prohibiting the legislature from engaging the State in the construction of any internal improvement or public work, without first obtaining the consent of a majority of the votes of the State at a general election, by a vote upon propositions distinctly stating the nature of the internal improvement or public work proposed, its probable cost, its utility or public benefit when completed, and how it is to be paid for, whether by taxation or otherwise: Provided, That this provision shall not interfere with the right of the State to construct or repair the State House, Penitentiary, or buildings for scientific or beneficiary purposes. Milroy (p. 134).

24. Appropriation of Proceeds of State's Interest in Public Works and Surplus to Payment of State Debt—*Resolved*, That the Committee on the State Debt and Public Works be directed to inquire into the propriety of inserting in the new Constitution, a clause providing that the proceeds of the State's interest in any of the public works, shall be devoted to the payment of the principal of the public debt; and also, that any surplus in the treasury at any time hereafter, arising from taxes for general state purposes, shall be set apart for the same purpose.<sup>26</sup> Maguire (p. 139).

25. Banks and Corporations—*Resolved*, That the Committee on Currency and Banking inquire into the expediency of reporting a provision in the new Constitution, embracing the following propositions:

1st. That the legislature be prohibited from passing any law granting any special charter to any person, persons, or corporation, for the purpose or with the power to issue bills of credit, notes for general circulation as a currency, or for any banking purpose whatever.

2d. Corporations may be formed under general laws. All

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26. An attempt by Kilgore to secure this revenue to the support of common schools was defeated by the Convention.

laws governing or regulating corporations, or granting any rights or franchise, or taking any privileges which the people may wish to reclaim, may be altered, amended, or repealed by the legislature. The officers and stockholders of any bank, banking association or corporation, shall be individually liable for all debts, notes, issues and obligations to pay money, incurred by said bank, association or corporation, during the time of the service of said officer, or while any such person was or may be a stockholder.

3d. The legislature shall pass no law authorizing or sanctioning the suspension of specie payments, by any person, association or corporation.

4th. The legislature shall restrict all persons, associations or corporations from issuing any bills or notes to circulate as money, until such person, association or corporation shall have first given ample security, to be deposited with a proper officer of State, either in gold, or silver, or in State or United States stocks or bonds; such stocks and bonds to bear and pay full and legal rates of interest, and the amount of said stocks or bonds to be fully equal to the amount of bills or notes to be issued and circulated by said person, association or corporation. It shall not be lawful for any person, association or corporation to issue or put in circulation, as money, any bill, bills or notes, without the same have been regularly registered by the proper officer of State, and he, the said officer, shall have re-numbered and countersigned all bills or notes thus to be issued, or to be put in circulation.

5th. In the event of insolvency or suspension of any bank or banking association, the bill holders thereof, shall be entitled to preference of payment, over all other creditors of such bank or association.

6th. The legislature shall provide by law, that no transfer of the property, assets or obligations of the creditors of such person, association or corporation shall be transferred to preferred creditors, or to any other person or persons, whereby the property, means and assets of said bank, shall be diverted from the payment of the notes, bills, issues and obligations of said person, association or corporation.

7th. The legislature shall provide for the creation and existence of such necessary supervisory power on the part of the State as will insure a knowledge of the proceedings and condition of all banking institutions which may be organized under the laws of the State, and shall retain such control, through a state directory, as may be essential to the safety of the people.

8th. The rights, privileges, powers and franchises of the existing State Bank of Indiana to be continued until the expiration of its charter, without extension or diminution. Morrison of Marion (p. 142).

26. Debts of Honor, Documentary Acknowledgment—*Resolved*, That the Committee on Law and Law Reform be directed to inquire into the propriety of inserting a section in the Constitution, that all debts contracted from and after the 4th of July, 1860, shall be debts of honor and not collectible by law, unless acknowledged by judgment, bond or note. Shoup (p. 156).

27. Special Corporations Continued Under General Law—*Resolved*, That the Committee on Corporations be instructed to inquire into the expediency of reporting a section for the amended Constitution in the words following: Every corporation now existing by special charter, or which may be formed under a special charter prior to the adoption of this Constitution, may, upon the surrender of its charter, be continued under the general laws which govern corporations of the class to which it belongs; but from and after January the first, 1860, no corporation shall exist in virtue of any special act or charter. Read of Monroe (p. 156).

28. Tax on Bachelors for Support of Old Maids and Common Schools—*Resolved*, That the Committee on the Legislative department be instructed to inquire into the expediency of inserting a clause in the Constitution granting the legislature the power to impose an annual tax of twenty-five dollars on all bachelors over the age of thirty-five, to be appropriated to the benefit of old maids and common schools. Sherrod (p. 159).

29. Exemptions from Taxation—*Resolved*, That the Committee on Finance and Taxation be instructed to inquire into the expediency of reporting a provision to be inserted in the amended Constitution, requiring the legislature to provide by law that all property now exempt, by general or special statute, from taxation, shall be placed upon the duplicate for taxation, except property of the United States, property of the State, property of the several counties held for public purposes, and property used exclusively for public common schools and public cemeteries and burying grounds; and providing further, that the legislature be prohibited from exempting from taxation any property except that above named. McFarland (p. 226).

30. Stock Subscriptions to Private Corporations by Counties—*Resolved*, That the Committee on Finance and Taxation be instructed to inquire into the expediency of reporting a provision



to be made a part of the amended Constitution, which shall prohibit counties from borrowing money for investment in the stock of private corporations. Graham of Miami (p. 228).

31. Prohibiting State Subscriptions to Private Enterprises—*Resolved*, That the committee on State debt be instructed to inquire into the expediency of so amending the Constitution, that the State shall hereafter be prohibited from becoming a joint owner or stockholder in any company or association of individuals in this State or elsewhere, formed for any purpose whatever. Read of Monroe (p. 229).

32. Valuation and Equalization of Taxable Property—*Resolved*, That the Committee on Finance and Taxation be directed to inquire into the expediency of requiring the legislature to make more effectual provision than now exists, for ascertaining the value of personal property; and also to adopt if practicable, more effective measures to secure an equal valuation of real estate. Maguire (p. 230).

33. Penalty and Redemption on Tax Sales—*Resolved*, That the Committee on Finance and Taxation be instructed to inquire into the expediency of so amending our Constitution, as to abolish the penalty of fifty per cent on property sold for delinquent taxes; also, to extend the terms of redemption, and to provide that personal property shall be first sold. Dick (p. 231).

34. State Bank—*Resolved*, That the committee on currency and banking be instructed to inquire into the expediency of inserting in the Constitution a provision authorizing the legislature to charter a State Bank and Branches with a capital stock not exceeding five millions of dollars, and that the amount of school fund that may have accumulated at the expiration of the present Bank charter shall be invested in stock of the said Bank so to be established, the profits of which shall be distributed for common school purposes equally. The remainder of the stock of the said Bank may be divided and taken by the State and individuals. The State shall reserve to herself the election of the state board of directors, and the superintendent of common schools shall be ex-officio a member of the said board, and that the individual Stockholders shall be liable to the amount of stock owned by them, and that the tax which may arise from individual stocks shall be a part of the common school fund, and the profits arising from the State stock shall constitute a sinking fund for the payment of the said stock; that the several Branches shall be mutually liable, as provided in the present charter of the State Bank; and that the

notes of the said Bank shall be redeemable in gold and silver, on demand, and on the failure of any Branch of said Bank to comply with the provisions of said charter, the State shall reserve to herself the right to wind up said Branch or Branches at pleasure. Prather (p. 232).

35. Delinquent Penalties and Redemptions—*Resolved*, That the Committee on Finance and Taxation be instructed to inquire into the expediency of so amending the Constitution as to abolish the penalty of fifty per cent on property sold for delinquent taxes. Also, to extend the term of redemption of said estate, and to provide that personal estate be first sold. Dick (p. 286).

36. Prohibiting Special Corporations—*Resolved*, That the Committee on the Legislative Department be requested to inquire into the expediency of prohibiting the legislature from passing any law authorizing special co-partnerships in this State. Taylor (p. 326).

37. Taxation of Bank Stock—*Resolved*, That the Committee on Finance and Taxation be instructed to inquire into the expediency of reporting a clause to be engrafted into the new Constitution, providing the stock and all other property of any bank that may be created in this State, shall be taxed as other property in the State is taxed. Bascom (p. 347).

38. Proportionate Taxation of Property—*Resolved*, That the Committee on Finance and Taxation be instructed to inquire into the expediency of reporting the following section to be incorporated in the new Constitution:

Sec. —. All property subject to taxation in this State, shall be taxed equally in proportion to its value. Conduit (p. 367).

39. Schedule of Property for Assessor—*Resolved*, That a select committee consisting of one from each congressional district be instructed to inquire into the expediency of adopting a clause in the new Constitution, that each tax-payer shall furnish the county assessor annually with a schedule of all his rights, credits, moneys, and effects, deducting therefrom the amount of his own debts, to the truth of which statement he shall make oath, and subscribe his name. Dick (p. 501).

40. Application of Proceeds of Sale of Bank Stock to Common Schools—*Resolved*, That the Committee on Currency and Banking, be instructed to report a section for the new Constitution, requiring the legislature at its first sitting under said Constitution to enact such law or laws, as shall be necessary to the immediate sale and transfer of the stock of the State in the present State Bank of

Indiana and apply the proceeds thereof, after the payment of the State bonds first issued for banking purposes, to the use of common schools. Ristine (p. 710). Laid on the table by a vote of 83-42 (p. 781).

(e) THE EXECUTIVE DEPARTMENT.

1. Governor's Tenure of Office and Ineligibility—The gubernatorial office extended to a four years' term, and a Governor to be ineligible for a second term. Foley (p. 50).

2. Restricting Pardoning Power—*Resolved*, That the Committee on the Executive be instructed to inquire into the expediency of restricting the pardoning power now vested in the Governor, and to report what, if any, restrictions are in their opinion expedient. Gibson (p. 67).

3. Bureau of Agriculture and Education—*Resolved*, That the Committee on the Executive be directed to inquire into the expediency of establishing, in connection with, and subordinate to, the office of the Secretary of State, a bureau of agriculture, and a bureau of education, the duty of each of which shall be to collect and diffuse such appropriate information, of general public interest, upon the subjects specified in the titles of each bureau, as may be directed by law. Chapman (p. 67).

4. Restricting Pardoning Power—*Resolved*, That the Committee on the Executive be instructed to inquire into the propriety of limiting the power of the Governor so that in the future he may be prevented from pardoning any person accused of crime previous to conviction. Foster (p. 67).

5. Pardons, Commutations and Remissions only on Petition of Citizens of Community and Majority of Trial Judges and Jurors—*Resolved*, That the Committee on the Executive be instructed to inquire into the expediency of so restricting the discretionary power of the Governor, that no reprieve or pardon, commutation, or remission of fine, forfeiture, or penalty, shall be granted, except upon the petition of a respectable portion of the citizens of the county or community among whom the crime or other violation was committed, and also a majority of the judges and jurors trying the offence. Smith of Scott (p. 68).

6. Governor's Tenure of Office and Ineligibility—*Resolved*, That the Committee on the Executive be instructed to inquire into the expediency of so amending the Constitution, that the Governor shall be elected for four years, and be ineligible forever afterwards. Cookerly (p. 74).



7. Filling Vacancies in Governor's Office by Election—*Resolved*, That the Committee on the Executive be instructed to inquire into the expediency of changing the present Constitution, that when the Governor of this State shall die, refuse to act, remove or resign, in that event a new election shall be had for Governor, instead of the mode pointed out in the existing Constitution of filling vacancies. Read of Clark (p. 74).

8. Ineligibility of Governor and Lieutenant Governor for any other Office Including United States Senator—*Resolved*, That the Committee on the Executive be instructed to inquire into the expediency of so amending the Constitution, that the Governor and Lieutenant Governor shall not, during the term for which they are elected, be eligible to any other state office, or to the United States Senate. Terry (p. 76).

9. Recording Reasons for Pardons or Remissions—*Resolved*, That the Executive Committee inquire into the expediency of engrafting into the Constitution a clause that whenever the Governor shall remit a fine or forfeiture, or grant a reprieve or pardon, he shall enter his reason for so doing on the records of the Secretary of State, in a book kept for that purpose. Alexander (p. 120).

10. Removal of Governor by Legislature Convened by Supreme Court—*Resolved*, That Committee No. 3 on the Executive, be directed to inquire into the expediency of inserting an article in the Constitution giving the legislature the power to declare the inability of the Governor, or of the person administering the duties of the office of Governor, by a vote of four-fifths of all the members elected to each House; and for this purpose the Supreme Court may convene the legislature. Read of Clark (p. 134).

11. Abolition of Office of Lieutenant Governor—*Resolved*, That the Committee on the Executive be instructed to inquire into the expediency of abolishing the office of Lieutenant Governor, and in case of the death or resignation of the Governor, the President of the Senate shall act as governor pro tem., and until a new election can be ordered. Mowrer (p. 264).

(f) THE LEGISLATIVE DEPARTMENT, ORGANIZATION, POWERS  
AND PROCEDURE.

1. Special Legislation, Single Subject Embraced in Act, Titles, Yeas and Nays, Publication of Acts—*Resolved*, That special legislation shall be prohibited; no act shall embrace more than one subject, and that shall be expressed in its title; upon the final pass-

age of every bill, in either house, the “yeas and nays” shall be entered upon the journals; and no act of the General Assembly shall be in force until after its publication in print, and distribution among the people. Hall (p. 26).

2. Divorces and Lotteries—*Resolved*, That the legislature shall be prohibited from granting divorces, and from establishing lotteries. Hall (p. 26).

3. Biennial and Special Sessions—*Resolved*, That the legislature shall meet biennially, but may be convened by the Governor in cases of emergency. Hall (p. 26).

4. Membership of House and Senate—*Resolved*, That the House of Representatives shall consist of one hundred members, and the Senate shall be composed of fifty members: Provided, The number in either house may be diminished by legislative enactment. Hall (p. 26).

5. Elections by General Assembly—*Resolved*, That all elections by the General Assembly or either branch thereof, shall be determined by a plurality of the votes given. Hall (p. 26).

6. Compensation of Members—*Resolved*, That the pay of the members of the legislature be fixed at \$2 per diem for the first six weeks, and \$1 per diem for any length of time thereafter.<sup>27</sup> Moore (p. 32).

7. Membership of House and Senate—*Resolved*, That the Committee on Legislation be instructed to inquire into the expediency of so amending the Constitution that one branch of the legislature shall consist of only seventy members, and the other branch, to wit, the Senate, shall consist of only thirty members. Sims (p. 47).

8. Biennial Sessions—A provision for biennial instead of annual sessions of the legislature. Foley (p. 49).

9. Date of Convention of Legislature—The legislature to commence its session on the first Monday in January. Foley (p. 49).

10. Prohibiting Local and Special Legislation—Local and special legislation wholly prevented. Foley (p. 50).

11. Tri-annual Sessions—*Resolved*, That the Committee on the Legislative Department be instructed to inquire into the expediency of engrafting into the Constitution a clause providing for tri-annual sessions of the legislature, and report to this Convention. Tague (p. 60).

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27. On October 25, this resolution was laid on the table by the Convention (p. 135).

12. Biennial Sessions—*Resolved*, That the Committee on the Legislative Department be instructed to insert a provision in the amendment to the Constitution adopting biennial, instead of annual, sessions of the legislature: Providing the Governor shall have the power to convene the legislature at any time in case of an emergency.<sup>28</sup> Edmonston (pp. 60, 88).

13. Organization of Legislature Within Ten Days or Forfeiture of Pay—*Resolved*, That the Committee on Legislation be requested to inquire into the expediency of inserting a provision in the Constitution requiring the legislative body of this State, at each session when met, to organize within ten days, and on failure to organize within ten days, then to receive no pay until an organization takes place. Smiley (p. 61).

14. Passage of Bills by Majority Vote and Yeas and Nays—*Resolved*, That the Committee on the Legislative Department be directed to report the following as an amendment to the Constitution, viz: No bill shall be passed unless by the assent of majority of all the members elected to each branch of the General Assembly, and the question upon the final passage shall be taken immediately upon the last reading, and the yeas and nays entered on the journal. Stevenson (p. 63).

15. Requiring General Laws to be Uniform—*Resolved*, That the Committee on Special and Local Legislation and uniformity of laws, be instructed to report a provision in the Constitution, that laws of a general nature shall be uniform throughout the State. Farrow (p. 64).

16. Prohibiting Special Acts of Incorporation—*Resolved*, That the Committee on Special and Local Legislation and Uniformity of Laws, be requested to inquire into the expediency of

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28. This resolution was offered on October 14 and under the rules laid over one day. It was not taken up for consideration until October 16. On that day Read of Clark moved to amend by providing triennial instead of annual sessions, a proposition which was rejected by a vote of 43-83. The proviso relative to emergency sessions was proposed by Graham of Warriek and adopted by the Convention. The following amendments to the resolution were submitted and promptly rejected: (1) By Dunn of Jefferson, That the Legislative Committee "inquire into the expediency of" providing biennial sessions; (2) By Watts, That "the House of Representatives shall consist of sixty-six members, and the Senate of thirty-three members;" (3) By Prather, That "the legislature shall be limited to a term not exceeding sixty days;" (4) By Miller of Fulton, That "the legislature may, by a vote of the people without calling a convention for that purpose, alter to annual or triennial sessions, having first provided for taking such vote;" (5) By Foster, That "the sessions of the legislature shall not continue longer than six weeks without reduction to one-half of the per diem allowance of the members;" (6) By Hardin, That "the Governor in his proclamation convening the legislature, shall state specifically the subjects which they shall consider and no other subjects shall be taken into consideration at such special session." The resolution in its amended form was adopted by a vote of 124-5.



in incorporating a provision in the new Constitution, prohibiting the legislature from passing any special acts of incorporation. Allen (p. 64).

17. Revision and Amendment of Acts—*Resolved*, That no law shall be revised or amended by its title; but in such cases the act revised or section amended shall be re-enacted and published at length. Nor shall the legislature ever adopt any system or code of laws, by general reference to such system or code, but in all such cases shall specify the several provisions of the laws intended to be enacted. Smith of Ripley (p. 69).

18. Prohibiting Contingent Laws—*Resolved*, That the Committee on the Legislative Department be instructed to inquire into the expediency of introducing a provision to the effect following: That no law shall be passed contingent upon the approval or disapproval of any authority, except as provided in this Constitution. Read of Monroe (p. 69).

19. Membership of House and Senate—*Resolved*, That the Legislative Committee be instructed to inquire into the expediency of engrafting a provision into the Constitution, fixing the whole number of members of the General Assembly to consist of one hundred; the House of Representatives to consist of seventy, and the Senate of thirty members. Morrison of Washington (p. 69).

20. Membership of House and Senate—*Resolved*, That the Committee on the Legislative Department be requested to inquire into the expediency of fixing the number of the members of the House of Representatives at sixty, and that of the Senate at thirty. Coats (p. 70).

21. Triennial Session of Legislature and Date of Meeting—*Resolved*, That the Committee on the Legislative Department be instructed to inquire into the expediency of providing that the legislature shall meet triennially, on the first Monday after the first day of January. Holliday (p. 71).

22. Prohibiting Retrospective Laws—*Resolved*, That the Committee on Legislation be instructed to inquire into the expediency of incorporating a clause into the Constitution, prohibiting the legislature from enacting any law having a retrospective operation, or giving effect to contracts otherwise void or incapable of being enforced. Holman (p. 71).

23. Biennial Sessions and Date of Meeting—*Resolved*, That the Committee on the Legislative Department be instructed to inquire into the expediency of engrafting a provision in the Con-

stitution requiring the legislature of the State to meet biennially, on the first Monday in January, from and after the year 1852, and report the same to this Convention at an early day. Prather (p. 77).

24. Election of State Representatives by Districts—*Resolved*, That the Committee on the Legislative Department be instructed to report the following as a part of the amended Constitution, viz: The members of the House of Representatives shall be elected by single districts, such districts to be bounded by county, precinct, town, or ward lines, to consist of contiguous territory, and be in as compact form as practicable; Provided that parts of the different counties shall not be united to form representative districts. Stevenson (p. 78).

25. Reading of Bills, Suspension of Rules, Yeas and Nays—*Resolved*, That every bill that passes either branch of the General Assembly shall be entirely read on three different days, unless in case of emergency, when two-thirds of the House shall otherwise direct, and on the final passage of every bill, the ayes and noes shall be called and entered on the journals. Tague (p. 80).

26. Prohibiting Retrospective Laws—*Resolved*, That the Committee on the Legislative Department be instructed to inquire into the expediency of inserting in the Constitution a provision that no retrospective laws shall be passed. Terry (p. 87).

27. Indefeasible Right of Legislature to Alter, Amend or Repeal any State Law—*Resolved*, That the Committee on the Rights and Privileges of the inhabitants of this State be instructed to inquire into the expediency of introducing a provision in the bill of rights, affirming the right of the people in General Assembly convened, to alter, amend, or repeal, any law of the State. Read of Monroe (p. 90).

28. Membership of House and Senate, Power to Reduce—*Resolved*, That the Committee on Elective Franchise and Apportionment of Representation inquire into the expediency of so amending the Constitution that the number of Representatives in the legislature shall never exceed one hundred; and the number of Senators shall never exceed fifty; leaving the legislature with power to reduce said number at any time, if such reduction shall become necessary.<sup>29</sup> Pepper of Crawford (p. 131).

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29. Amendments were proposed by Cookerly to fix the membership of the House at 70 and the Senate at 30, and by Rariden to fix the ratio of representation at one senator for each 5,000 voters, and one representative for each 2,500, until otherwise changed by the legislature, but after consideration the matter was dropped (pp. 131, 160, 164).

29. Business of Special Sessions Confined to Subjects Named in Governor's Proclamation—*Resolved*, That the Committee on the Executive be instructed to inquire into the expediency of providing in the Constitution, that whenever the governor shall convene the legislature, he shall state specifically, in his proclamation, the subjects to be considered, and no other subjects shall be taken into consideration at such special session. Hardin (p. 134).

30. One Representative to Each County—*Resolved*, That the Committee on Elective Franchise and Apportionment of Representation be instructed to inquire into the expediency of giving to each county at least one Representative to the State legislature. Bascom (p. 134).

31. Authorizing Governor to Appoint Subordinate Employees of General Assembly—*Resolved*, That the Committee on the Executive be instructed to inquire into the expediency of incorporating into the Constitution a provision, making it the duty of the governor to appoint the secretaries, clerks, sergeants-at-arms, and door-keepers of the Senate and House of Representatives. Barbour (p. 146).

32. Date of First Meeting of Legislature—*Resolved*, That the first meeting of the General Assembly under the amended Constitution shall be on the first Monday of January in the year of our Lord one thousand eight hundred and fifty-three; which shall be the commencement of the biennial sessions. Johnson (p. 146).

33. Prohibiting Special Legislation Relative to Change of Names and Estates of Persons Laboring under Legal Disabilities—*Resolved*, That the Committee on the Legislative Department inquire into the expediency of providing in the new Constitution that the General Assembly shall have no power to change the names of individuals, or direct the sale of estates belonging to infants, or other persons laboring under legal disabilities, by special legislation; but by general laws shall confer such powers on the courts of justice. Hitt (p. 154).

34. Laws Uniform in their Application—*Resolved*, That the Committee on Local and Special Legislation and Uniformity of Laws, be instructed to inquire into the expediency of reporting provisions of the amended Constitution requiring all acts of the General Assembly, in the following cases, to be general and of uniform operation throughout the State. That is to say,

1st. All laws regulating the jurisdiction and duties of justices of the peace and constables.

2nd. All laws for the punishment of crimes and misdemeanors.



3d. Laws providing for summoning and impanelling grand and petit jurors, and fixing their compensation.

4th. Laws providing for the practice of the law and practice in chancery proceedings, and providing for the granting of divorces and changing the venue, and providing for changing the names of persons.

5th. Laws providing for laying out, opening and repairing highways, working on the same, and the election or appointment of supervisors.

6th. Laws regulating the election of county and township officers, and fixing their compensation.

7th. Laws regulating county and township business.

8th. Laws for the assessment and collection of all taxes for state, county, road, and educational purposes.

9th. Laws providing for carrying on and conducting common schools, and the locating and preservation of school funds.

10th. Laws in relation to fees and salaries of office.

11th. Laws in relation to municipal corporations, such as counties, townships, school districts, cities, boroughs, towns and villages.

12th. Laws for incorporating seminaries, schools, colleges, libraries, churches, scientific and benevolent societies.

13th. Railroad, plank road, turnpike road, and bridge companies. Newman (p. 155).

35. Uniform General Laws—*Resolved*, That the Committee on Special and Local Legislation be instructed to inquire into the expediency of inserting in the amended Constitution, a provision that all laws of a general nature, shall be uniform in their operation throughout the State. Terry (p. 227).

36. Geological Survey—*Resolved*, That a select committee of seven be appointed to inquire into the expediency of instructing the first legislature, that meets after the adoption of this Constitution, to order a thorough geological survey of this State. Dunn of Perry (p. 227).

37. Prohibiting Legislature to Fix Rate of Interest—*Resolved*, That the Committee on the Legislative Department be instructed to inquire into the expediency of reporting a clause in the Constitution denying to the legislature the power to pass any law prohibiting any person, or persons, from the right to stipulate for any amount or rate of interest in his or their discretion. Miller of Clinton (p. 230).

38. Consolidation of Previously Incorporated Companies—

*Resolved*, That the Committee on the Legislative Department be instructed to inquire into the expediency of prohibiting the legislature from passing any law for the purpose of uniting or consolidating companies incorporated previous to the adoption of this constitution. Hardin (p. 231).

39. Prohibiting Divorces Except for Fornication—*Resolved*, That the Committee on the Legislative department be instructed to inquire into the expediency of incorporating into the constitution of this State the following provision, viz: That the legislature shall never pass any law by which divorces may be granted, except for fornication. Nave (p. 232).

40. Benevolent and Eleemosynary Institutions—*Resolved*, That the Committee on Public Institutions be instructed to inquire into the expediency of providing in the constitution for the permanent establishment and support of the Asylum for the Insane, for the Deaf and Dumb, and for the Blind, and also a House of Refuge for the punishment of juvenile offenders. Bryant (p. 232).

41. Changing County Boundaries—*Resolved*, That the Committee on County and Township Organization be requested to inquire into the propriety of incorporating a clause in the new constitution empowering the legislature to change or alter county boundaries whenever the public good requires the same. Milligan (p. 286).

42. Geological Survey—*Resolved*, That the Committee on the Legislative Department be instructed to inquire into the expediency of providing that the General Assembly shall, as soon as practicable, provide for a thorough geological survey of the State, the result of which shall be printed and distributed amongst the people, in such manner as may be provided by law. McClelland (p. 287).

43. Benevolent and Eleemosynary Institutions—*Resolved*, That the Committee on Public Institutions of Learning, be instructed to report the following article, to-wit: It is the duty of the State to provide for the comfort and happiness of all its inhabitants, and especially the unfortunate, such as the Deaf and Dumb, the Blind, and the Insane; therefore it shall ever be the duty of the General Assembly to cherish and support the various institutions erected in this State for their benefit. Nofsinger (p. 325).

44. Uniformity of all Local Laws—*Resolved*, That the Committee on Local and Special Legislation and Uniformity of Laws,

inquire into the expediency of inserting a section in the proper article of the new constitution, requiring the General Assembly as soon as practicable to revise, amend, alter, or repeal the laws now in force, so as to make all laws now enacted and to be enacted uniform in the several counties of the State. Smiley (p. 370).

45. Permanent Enclosure of Tippecanoe Battleground—*Resolved*, That the Committee on Public Institutions of the State be directed to inquire into the expediency of putting a provision in the new constitution providing for the permanent enclosure of the Tippecanoe Battle Ground, donated to the State by the late General John Tipton. Pettit (p. 497).

46. Legislative Doorkeeper Let to Lowest Bidder—*Resolved*, That the Committee on the Legislative Department be instructed to inquire into the expediency of inserting a clause in the constitution requiring the General Assembly to let the office of doorkeeper at each session thereof to the lowest responsible bidder. Badger (p. 554).

47. Tippecanoe Battleground—*Resolved*, That the Committee on Public Institutions of the State be directed to inquire into the expediency of inserting a provision in the new Constitution providing by inviting donations for the erection of a suitable and permanent monument upon the Tippecanoe Battle Ground to commemorate the valor of those who fought, and perpetuate the memory of those who fell upon that bloody battle-field, and also to inquire into the expediency of causing a suitable monument to be erected at the Capital of the State to the memory of our gallant volunteers who fell in the late war with Mexico. Gregg (p. 555).

48. Local and Special Laws—*Resolved*, That the Committee on Special and Local Legislation be instructed to inquire into the expediency of reporting a section providing that hereafter no law of a special or local character shall be passed, unless the same cannot be provided for by a general law. McClelland (p. 605).

49. Exempting Certain Counties From the Operation of Uniform Township Laws—*Resolved*, That the Committee on Miscellaneous Provisions be instructed to report the following section:

Sec.—. The provisions contained in this constitution requiring uniform laws regulating township business, shall not affect the laws now in force regulating the mode of transacting township business in the several townships of Dearborn, Switzerland, Ohio, Wells and Adams counties, but the General Assembly may, when deemed expedient, amend or repeal said laws. Johnson of



Dearborn. Efforts were made to include Noble, Steuben, DeKalb, Elkhart, Allen, Washington, Sullivan, Kosciusko, Whitley and Huntington, and the proposed resolution was laid on the table (p. 781).

(g) SCHOOLS AND THE MEANS OF EDUCATION.

1. Fines Applied to Support of Common Schools—*Resolved*, That all fines assessed for any breach of the penal laws shall be applied to the support of common schools. Hall (p. 26).

2. Fines and Forfeitures for Support of Common Schools—*Resolved*, That fines and forfeitures now appropriated to county seminaries to be distributed for common school purposes. Foley (p. 50).

3. Common Schools, Exclusively, to be Supported by Public Money—*Resolved*, That the Committee on Education be instructed to report an amendment of the second section of the ninth article of the constitution providing that the legislature in the establishment of a general system of education, shall not provide for or establish, at the public charge, any schools or institutions of learning other than district or township schools. Hendricks (p. 63).

4. Abolition of County Seminaries and State University—*Resolved*, That the Committee on Education inquire into the expediency of abolishing the present county seminary system, and also the State University, and of so amending the constitution as to compel the legislature to enact the necessary laws for the sale of the property of said institutions, and to apply the proceeds thereof to the use of common schools. Ristine (p. 68).

5. Apportionment of School Revenue and Fines and Forfeitures on basis of number of Scholars—*Resolved*, That the Committee on Education be instructed to inquire into the expediency of reporting a provision in the constitution, that the taxes for school purposes, and funds arising from fines and forfeitures of recognizances, be divided among the schools in each township according to the number of scholars in each school. Hamiltor (p. 70).

6. Apportionment of Permanent Common School Fund on Basis of Taxable Polls—*Resolved*, That the Committee on Education inquire into the expediency of inserting a provision in the constitution, that at the expiration of the charter of the State Bank of Indiana, the fund set apart in the 114th Section of said charter as a permanent fund to be appropriated to the cause of

common school education, shall be divided in the proportion of the taxable polls among the counties of the State. Kent (p. 71).

7. Public Support of Common Schools Exclusively—*Resolved*, That the Committee on Education be instructed to inquire into the expediency of applying all the funds belonging to the State, now applied to educational purposes, to the support of common schools, and report to this Convention such measures as they may deem necessary to effect this object. Bowers (p. 78).

8. Application of Fines for Support of Common Schools, County Seminaries—*Resolved*, That the Committee on Education be instructed to inquire into the expediency of so amending our present state constitution, which provides that all fines assessed for breach of the penal laws, shall be applied to the use of county seminaries, shall be hereafter devoted for the benefit of common schools in the school districts, where the person resides from whom the fine is assessed and collected, and that they further inquire what disposition shall be made of the buildings and other property attached to such institutions. Foster (p. 87).

9. Inviolable Appropriation for Common Schools of all Revenue Accruing from Sales of Lands—*Resolved*, That the Committee on Education be instructed to inquire into the expediency of reporting a provision in the amended constitution, requiring that the proceeds from the sales of all lands which have been, or may hereafter be, granted by the United States to this State, for common school purposes, and the proceeds of all lands or other property given by individuals or appropriated by the State for like purposes, and the proceeds from the sales of all lands that have been, or may be hereafter, granted to this State, and which shall not be granted for any other specific object, shall be and remain a perpetual fund, the interest and income of which, together with the rents of all such lands as may remain unsold, shall be inviolably appropriated and annually applied to the maintenance of common schools, and to no other purpose whatever. Morrison of Washington (p. 117).

10. Escheated Lands Appropriated to Use of Common Schools—*Resolved*, That the Committee on Education be instructed to inquire into the expediency of engrafting a provision in the amended constitution requiring that all lands, the titles to which shall fail from a deficit of heirs, shall escheat to the State, and the interest on the clear profits from the sales thereof shall be appropriated, exclusively, to the support of common schools. Morrison of Washington (p. 144).

11. Prohibiting Charters for Banks and Improvements Unless Surplus Proceeds be set apart for Common Schools—*Resolved*, That the Committee on Education be instructed to inquire into the expediency of amending the constitution, so that there shall, hereafter, be no charter granted for banking purposes, or internal improvements by the General Assembly, unless said charter shall provide for a reasonable proportion of the net proceeds of such corporation, to be set apart for common school purposes. Tague (p. 144).

12. Investment of Common School Fund in State Stocks—*Resolved*, That the Committee on Education be instructed to inquire into the expediency of reporting a provision for the new constitution authorizing the General Assembly to invest in State stocks, or (in the event of the establishment of another State Bank) in State Bank stocks, the total amount which will be due to the common school fund, under the provisions of the 14th section of the present State Bank charter, together with all such moneys as may belong to the common school fund, and which have not heretofore been distributed amongst the several counties of this State, and that the interest arising from such investment be annually apportioned to common school education.<sup>30</sup> Miller of Gibson (p. 156).

13. Appropriating Swamp Land Fund to Support of Common Schools—*Resolved*, That the Committee on Education inquire into the expediency of providing a clause in the constitution, that the proceeds arising from the swamp lands in Indiana (supposed to be a million of acres), donated to the State by the late session of Congress, be appropriated to common school education. Kent (p. 226).

14. Appropriation of University Funds to Support of Common Schools—*Resolved*, That the Committee on Education be instructed to inquire whether the funds now pertaining to the State University can, consistently with the grants in which the same originated, be appropriated to any other educational purposes, and if so, whether the same cannot be applied to the endowment of common schools, to the manifest advancement of the educational interests of the State; and report at the earliest convenient period. Holman (p. 231).

15. Dividing Interest on University Fund Proportionately Among Colleges—*Resolved*, That the Committee on Education be

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30. The last clause of this resolution relative to the interest on investments was submitted by Kent and adopted as a part of the resolution.



instructed to inquire into the expediency of annually dividing the interest on the university fund among the several incorporated colleges of this State, in proportion to the number of students in each of said colleges during the year; and to inquire into the expediency of appropriating the same to the use of common schools. Borden (p. 325).

16. Forfeiture of Delinquent Tax Lands to State—*Resolved*, That the Committee on Education be instructed to inquire into the expediency of providing in the new constitution, now about to be adopted, that lands returned delinquent for the nonpayment of the state and county revenue, shall not be liable to be sold therefor, so as to enable private individuals to become purchasers thereof, but to provide that the same shall become forfeited to the State for the benefit of common schools. Thornton (p. 326).

17. Teaching any Language Other than English—*Resolved*, That the Committee on Education be instructed to inquire into the expediency of providing that the free holders of any school district may provide that their children may be taught, in the district school, any other language in connection with the English language Edmonston (p. 367).

18. Fund for Education of Colored Children—*Resolved*, That the Committee on Education be instructed to inquire into the expediency of reporting a provision for the consideration of this convention, requiring that all taxes collected from the property of negroes and mulattoes in this State, shall be hereafter applied to the education of colored children; and that such children be excluded from a participation in the common school fund. Murray (p. 372).

#### (h) NEGROES.

1. Prohibiting Immigration of Free Negroes into State—*Resolved*, That there shall be a provision in the constitution prohibiting free blacks from immigrating into this State. More (p. 32).

2. Prohibiting Immigration of Free Negroes into State—*Resolved*, That the Committee on the Legislative Department be instructed to inquire into the expediency of inserting in the constitution a clause prohibiting the emigration of free negroes to the State, and enjoining it upon the legislature to pass at their first session next ensuing the ratification of the constitution, proper and stringent laws for the faithful observance of such clause. Miller of Clinton (p. 68).

3. Prohibiting Negroes to Testify Except Against Negroes—*Resolved*, That the Committee on the Rights and Privileges of the inhabitants of this State be instructed to prepare a provision in the constitution, prohibiting the legislature from passing any law giving to any person of color the right to give testimony in any case, other than against persons of color. Edmonston (p. 139).

4. Separate Submission of Negro Suffrage to People—*Resolved*, That the Committee on the Elective Franchise be instructed to inquire into the expediency of separately submitting the question of negro suffrage to the people.<sup>31</sup> Colfax (p. 139).

5. Adoption of Provisions of Constitution of 1816 Relative to Negroes—*Resolved*, That the Committee on Legislation be instructed to inquire into the expediency of adopting that part of our present constitution, which refers to negroes, mulattoes and Indians, as a part of the constitution that we are about to form, and of excluding any thing and every thing else upon the subject, either for or against said negroes, mulattoes and Indians from the new constitution; and of leaving in the hands of the people the power to legislate upon the subject as it now is, in order that the legislature may from time to time, pass such laws to govern the matter, as it may deem right and expedient. Hogin (p. 143).

6. Deportation of Free Negroes—*Resolved*, That the Committee on Rights and Privileges of the inhabitants of the State, be instructed to inquire into the propriety and expediency of granting power to future legislatures to pass such laws from time to time as shall, in an equitable manner, cause the removal of the free negro population from the State. Spann (p. 155).

7. Annual Appropriation for Negro Colonization—*Resolved*, That the Committee on the Rights and Privileges of the inhabitants of the State inquire into the expediency of reporting in the amended constitution the following section: There shall be an annual appropriation of not less than ten thousand dollars, set apart by law for the gradual colonization of so many of the negroes and mulattoes now in this State as shall desire to leave it. Garvin (p. 157).

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31. Berry moved as a substitute, "That the Committee on the Elective Franchise, etc., be instructed to report a provision for the amended constitution, providing that negroes and mulattoes shall be eligible to vote at the several elections in this State." No disposition was made of the proposition till the following day, October 28, when May submitted an amendment to the amendment, that negroes and mulattoes be permitted to vote "under such restrictions and qualifications—as they may deem necessary." May's amendment was rejected by consent, Berry's amendment by a vote of 1-122, and the original resolution by a vote of 62-60 (p. 140).

## (i) METHODS OF AMENDING THE CONSTITUTION.

1. Authorizing Legislature to Propose One Amendment at any Regular Session, Majority of Two-Thirds Necessary for Adoption—*Resolved*, That Article 8th of the Constitution be so amended that the legislature may propose one amendment at any regular session, to the Constitution, which amendment shall be published with the laws of said State and the people shall take a vote on said amendment at the next election for governor, and if there is a majority of two-thirds of all the votes given in favor of said amendment, then said amendment shall compose a part of said Constitution. Tague (p. 66).

2. Amendments by Initiative of Fifty Thousand Citizens—*Resolved*, That the Committee on Future Amendments to the Constitution, inquire into the expediency of so amending the Constitution, that hereafter at any time when the citizens of Indiana present to the legislature a petition or memorial with fifty thousand signers praying for an amendment to the Constitution, setting forth specifically such amendment, that the legislature shall provide by law for the said citizens to vote on such proposed amendment, and if adopted, become a part of the Constitution, and be engrafted by the next legislature into the Constitution. Steele (p. 68).

3. Amendments Submitted by Legislature when Popular Dissatisfaction is Manifest, and Adopted if Majority of Voters Approve—*Resolved*, That the Committee on Future Amendments to the Constitution be directed to inquire into the expediency of inserting in the Constitution substantially the following principle, to-wit: That whenever the legislature shall become satisfied that a majority of the people of the State are dissatisfied with any portion of the Constitution, it shall be their duty, by joint resolution or otherwise, to present to the voters of the State, in a distinct form, such proposed change or changes to be acted upon by the voters at the polls at the next general election, and if a majority of all the votes given at such election be given in favor of such change or changes and so made to appear to the next ensuing legislature, it shall be the duty of the Executive to issue his proclamation declaring said amendment or amendments to be a part and parcel of the constitution. Frisbie (p. 69).

4. Amendments to Constitution—*Resolved*, That the Committee on Future Amendments to the Constitution, be instructed to engraft in the new constitution the following article: Any amendment or amendments to this constitution may be pro-



posed in the Senate or House of Representatives, and if the same be agreed to by two-thirds of the members elected to each House, and approved by the governor, such proposed amendments shall be entered on their journals, with the yeas and nays taken thereon, and the Secretary of State shall cause the same to be published three months before the next general election, in at least one newspaper in every county in which a newspaper shall be published; and if in the legislature next afterwards chosen, such proposed amendment or amendments shall be agreed to by a majority of the members elected to each house, the Secretary of State shall cause the same again to be published in the manner aforesaid, at least three months previous to the next general election for representatives to the State legislature, and such proposed amendment or amendments shall be submitted to the people at said election, and if a majority of all the votes cast for and against the same shall approve and ratify such amendment or amendments, the same shall become a part of the constitution. If more than one amendment be submitted at a time, they shall be submitted in such manner and form that the people may vote for or against each amendment separately. The legislature shall not propose an amendment or amendments to the constitution oftener than once in ten years.<sup>32</sup> Read of Clark (pp. 444, 497).

#### (j) INTOXICATING LIQUORS.

1. Prohibiting Granting License for Sale of Spirituous Liquors—*Resolved*, That a provision be incorporated in the constitution of the State of Indiana to restrict the Indiana Legislature from granting a license to vend spirituous liquors in the State. Steele (p. 48).

2. Prohibiting Licensing Sale of Intoxicating Liquors —*Resolved*, That the Committee on the Legislative Department be and they are hereby instructed to report to the Convention a section to be put into the new constitution as follows, to-wit:

Sec. —. The General Assembly shall not pass or continue in force any law authorizing the granting any license or permit for the sale of intoxicating liquors. Robinson (p. 229).

3. Sale of Intoxicants—*Resolved*, That a select committee, to consist of seven delegates to be appointed by the President, whose duty it shall be at an early day to prepare and report to the con-

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32. Read originally "a majority of the qualified electors;" stricken out, by consent, on motion of Mr. Stevenson.

vention a section for the new constitution, in substance as follows, to-wit:

Sec. —. The General Assembly shall not pass or continue in force any law authorizing the grant of a license or permit for the sale of ardent spirits or intoxicating liquors. Robinson (p. 555). Laid on the table by a vote of 78-44 (p. 603).

(k) THE MILITIA.

1. Adopting Provisions of Constitution Relative to Militia—*Resolved*, That the Committee on the Militia be instructed to report a proposition, adopting Article 7 of the present constitution, and for the insertion of the same in the new constitution. Chandler (p. 74).

2. Abolition of Militia System Except in Time of War—*Resolved*, That the Committee on the Militia be requested to inquire into the propriety of abolishing the militia system except in time of war. Milligan (p. 77).

3. Substitution of Volunteer for Present Military System—*Resolved*, That the Committee on the Militia be instructed to inquire into the expediency of abolishing our present militia system and of substituting in its stead a volunteer military system, which shall provide that there may be one and not more than three volunteer independent companies in any one county, and to provide for the formation of said companies into regiments, brigades, and divisions, and for the proper officering of, and drawing arms for the same, and that to foster the maintenance of said system and encourage the formation of such companies it shall provide that the members of said companies shall be exempt from working on roads, from poll tax, and have such other immunities as the legislature may deem expedient: Provided, That no person shall be a non-commissioned officer or private in said companies who is over forty-five years of age. Milroy (p. 144).

(l) CHARACTER, CHANGES AND SUBMISSION OF THE CONSTITUTION.

1. Adjournment without Framing Constitution—WHEREAS, In the opinion of this Convention, the People of Indiana under their present wholesome constitution, have attained an enviable position amongst the States of this Union, and now enjoy a degree of prosperity and general happiness, of which they may well be proud: AND WHEREAS, We are admonished by the elements by

which we are surrounded, and which are apparent in our midst, that there is great danger, in an effort to amend the organic law, of deranging our present wholesome system, or supplanting it by one less acceptable to the People of the State; Therefore, *Resolved*, That we recommend to the People of the State the present Constitution as proposed by their Delegates in A.D. 1816, and adopted by the people. And that this Convention do now adjourn sine die. Kilgore (p. 25). Laid on table by vote of 126-11.

2. Fundamental Character of Constitution and Unnecessary Restraints on Legislature—*Resolved*, 1. That the legitimate object of a Constitution is to declare the natural and inherent rights of the citizen, to fix and establish the several departments of government, and declare and limit the powers to be exercised by each. 2. That no subject of a merely legislative character and not fundamental in its nature, should be engrafted on the Constitution. 3. That it is anti-republican to restrain the exercise of the public will through the legislature by unnecessary restraints on the legislative department of Government. Holman. Laid on the table by consent (p. 50).

3. Few Necessary Amendments but not Abolition of Constitution—WHEREAS, The people of the State of Indiana, in calling this Convention, did not intend to abolish, but amend the present Constitution, and the Convention being now fully organized, therefore, *Resolved*, That the Convention now proceed to take up the Constitution, article by article, and section by section, until we shall have made the few but necessary amendments thereto, as asked for or contemplated by the people. Wolfe (p. 63).

4. Abolition of Constitution and Substitution of Better—*Resolved*, That the various committees be instructed to inquire into the expediency of abolishing the present Constitution and substituting a better one. Sherrod (p. 70).

5. Submission of Constitution as a Whole for Acceptance or Rejection—*Resolved*, That no separate and distinct propositions shall be submitted by this Convention as proposed amendments to the constitution to be voted upon by the legal voters of the State; but the amended constitution as a whole shall be submitted to the people for their acceptance or rejection. Pepper of Crawford (p. 145).

6. Submission of Constitution on June 1, 1851—*Resolved*, That the committee on constitutional amendments inquire into the expediency of incorporating into the constitution of the State of Indiana, a provision providing for the election for the adoption



of the constitution, on the 1st Monday in June next, and that the vote be taken for and against the adoption of said constitution by living voice, provided we get through by that time. Steele (p. 501).

(m) PETITIONS BY THE PEOPLE.

1. Full Legal and Political Recognition of Negroes—Mr. Beard presented the proceedings of a meeting of the Friends of the Congregational Order, in favor of abolishing all distinction between the inhabitants of this State on account of color<sup>33</sup> (p. 81).

2. Slavery—Mr. Bascom presented a petition from a Baptist Association, on the subject of slavery<sup>34</sup> (p. 93).

3. Negro Suffrage—Mr. Kinley presented a memorial from an anti-slavery society of Friends, on the subject of negro suffrage (p. 93).

4. Denying Suffrage to Negroes and Prohibiting their Emigration to State—Mr. Biddle presented a petition from citizens of Howard county, praying that the right of suffrage be not granted to negroes, and that they should not be permitted to emigrate to this State (p. 101).

5. Formation of a New County—Mr. Robinson submitted a petition upon the subject of the formation of a new county out of the counties of Decatur, Jennings, Ripley, and Bartholomew (p. 122).

6. Abolition of Grand Jury System—Mr. Pepper of Ohio introduced a petition from the citizens of Ohio county on the subject of the abolition of grand juries. Laid on table (p. 123).

7. Prohibiting Licensing and Trafficking in Intoxicating Liquors—Mr. Hawkins introduced a petition from the members of the Indiana Conference of the Methodist Episcopal Church against the licensing or trafficking in intoxicating liquors (p. 123).

8. Corporations—Mr. Hamilton introduced a petition from the citizens of the city of Fort Wayne, praying a modification of

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33. The Committee on Rights and Privileges to whom this resolution was referred, reported on October 18, that the Committee on the Rights and Privileges of the inhabitants of this State, to whom was referred the memorial presented on behalf of a meeting of Friends of the Congregational Order in Dublin, Wayne county, praying that all provisions making distinction on account of color be excluded from the constitution, have had the subject under consideration, and have instructed me to report, that in their opinion it is inexpedient to act in the premises, and the resolution was laid on the table (p. 94).

34. These two resolutions, the former adopted by the Salamon River Regular Baptist Association, and the latter by the Religious Society of Anti-Slavery Friends of Newport, were, on October 21, on recommendation of the Committee on Rights and Privileges, to whom they had been referred, laid on the table (p. 112).

certain articles of the present constitution in relation to corporations (p. 123).

9. Prohibiting Manufacture and Sale of Intoxicating Liquor—Mr. Dunn of Jefferson introduced two petitions from citizens of Jefferson county on the subject of prohibiting the manufacture and traffic of intoxicating drinks (p. 128).

10. Colonization of Negroes—Mr. Hitt presented a memorial from the executive committee of the Colonization Society of Indiana on the subject of colonization of men of color (p. 140).

11. Negro Suffrage—Mr. Borden presented a petition from the colored people of Allen county upon the subject of negro suffrage (p. 140).

12. Negro Suffrage—Mr. Borden presented a petition from the Northeastern Baptist Association, in the county of Steuben, on the subject and in favor of negro suffrage (p. 140).

13. Prohibiting Traffic in Intoxicating Liquors—Mr. Gregg submitted two petitions from the citizens of Jefferson county, praying that the traffic in intoxicating liquors be prohibited (p. 164).

14. Prohibiting Traffic in Intoxicating Liquors—Mr. Bright submitted two petitions from the citizens of Jefferson county, praying for the prohibition of legalized traffic in spirituous liquors (p. 164).

15. Full Political Rights for Negroes—Mr. Owen presented a petition from citizens of Wayne county, praying that no exceptions may be made in regard to color, etc., in respect to their rights as citizens (p. 164).

16. Prohibition of Legalized Traffic in Liquors—Mr. Dunn of Jefferson, presented two petitions from the citizens of Jefferson county, praying the prohibition of legalized traffic in spirituous liquors (p. 177).

17. Prohibition of Legalized Traffic in Liquors—The chair submitted a communication from the Grand Union of the Daughters of Temperance, for the State of Indiana, at its late session in the City of Indianapolis, praying for the prohibition of legalized traffic in intoxicating liquors (p. 193).

18. Prohibiting Granting of Licenses to Traffic in Ardent Spirits—Mr. Cole presented a petition from citizens of Hamilton county, praying the convention to insert a clause in the new constitution prohibiting the legislature from granting license for the sale of ardent spirits (p. 193).

19. Full Political Rights for Negroes—Mr. Thornton pre-

sented a petition from the colored people of Floyd county, praying the Convention to so amend the constitution as to give the negroes the same rights and privileges enjoyed by the whites (p. 207).

20. Vending Domestic Manufactured Articles without License—Mr. Foley presented a petition from citizens of Decatur county, praying that the convention so amend the constitution, that all articles of merchandise which are made and manufactured out of the products of American or United States soil, shall be sold without license to vend the same (p. 224).

21. General Banking Law—Mr. McFarland presented a memorial from a public meeting of the citizens of Lafayette, upon the subject of a general banking law, etc. (p. 224).

22. Rights of Colored People—Mr. Kinley presented two petitions from citizens of Henry county, in relation to the rights of colored people (p. 243).

23. Prohibiting Negro Immigration—The chair presented a petition from citizens of Clark county, praying for the prohibition of negroes in emigrating to this State, etc. (p. 257).

24. Abolition of Poll Tax—Mr. McClelland presented a petition from the citizens of Randolph county, praying the Convention to so amend the Constitution that hereafter no poll tax shall be levied or collected on the polls of the citizens of this State (p. 258).

25. Negro Emigration and Testimony—Mr. McClelland presented a petition from citizens of Randolph county, praying the convention to insert no clause in the new constitution prohibiting persons of color from emigrating into this State, nor to prevent them from giving testimony in courts of justice (p. 264).

26. Negro Emigration and Testimony—Mr. McClelland also presented a petition from colored people of Randolph county on the same subject (p. 264).

27. Licensing Sale of Ardent Spirits—Mr. Hawkins presented a petition praying that the legislature be prohibited from passing any law authorizing the granting of license for the sale of ardent spirits (p. 276).

28. Rights of Colored People—Mr. Hogin presented the petitions from inhabitants of Grant county, praying for the rights of colored people (p. 281).

29. Prohibiting Immigration of Negroes and Mulattoes—Mr. Gibson presented a petition from citizens of Clark county, pray-



ing the Convention to prohibit the immigration of negroes and mulattoes into this State (p. 285).

30. Rights of Colored Persons—Mr. Maguire introduced a petition from inhabitants of Marion county relative to rights of colored people (p. 303).

31. Political and Property Rights of Negroes—Mr. Newman presented a memorial from the religious society of Friends, of Indiana, in relation to the rights of people of color praying the convention not to insert in the new constitution a clause prohibiting negroes from immigrating into this State, from holding real estate, or the right to testify in courts of justice (p. 308).

32. Prohibiting the Liquor Traffic—Mr. Zenor introduced a petition from citizens of Harrison county, praying the prohibition of the traffic in ardent spirits (p. 322).

33. Banking—Mr. Biddle introduced a petition from citizens of Logansport on the subject of banking (p. 322).

34. Immigration and Testimony of Negroes—Mr. Hugin presented a petition from citizens of Grant county, praying the Convention to insert no clause in the new constitution prohibiting the immigration of negroes into this State, nor to prevent them from giving testimony in courts of justice, or acquiring and holding real estate (p. 359).

35. Size of Counties—Mr. Davis of Madison presented a petition from citizens of Madison county in relation to the size of counties (p. 407).

36. Various Subjects of Reform—Mr. Beeson presented a petition from citizens of Wayne county, in relation to various subjects of reform (p. 407).

37. Right of Negroes to Hold Property—Mr. McClelland submitted a memorial from colored inhabitants of Randolph county, praying the Convention to insert nothing in the new Constitution impairing, abridging, barring, or restricting their right to acquire, hold and transmit property (p. 422).

38. Trustees of Town of Clarksville—Mr. Read of Clark, presented a petition from the trustees of the town of Clarksville, praying that no change may be made in the new Constitution in relation to the residence of said trustee (p. 461).

39. Payment of Poll Tax—Mr. Borden presented a petition from citizens of the counties of Allen, Adams, and Wells, in relation to the payment of a poll tax (p. 511).

40. Payment of Taxes—Mr. Hitt presented a memorial from

citizens of Knox county, in relation to the payment of taxes (p. 511).

41. Size of Counties—Mr. Dunn of Perry, presented a petition from citizens of Perry county, in relation to the size of counties (p. 541).

42. Free Banks—Mr. Read of Clark presented a memorial from citizens of Clark county in relation to free banks (p. 610).

43. Immigration of Negroes—Mr. Brookbank presented a petition from citizens of Union county, praying the Convention to insert nothing in the new Constitution prohibiting the further immigration of persons of color into this State, etc. (p. 664).

44. Banking—Mr. Dunn of Jefferson submitted a petition from citizens of Jefferson county on the subject of banking (p. 676).

45. Rights of Married Women—Mr. Holman submitted a petition from citizens of Dearborn county on the subject of the rights of married women (p. 676).

46. Protest Against Certain Sections of the Constitution—Mr. Hovey presented a memorial from citizens of the county of Posey, protesting against various sections adopted by the Convention (p. 710).

47. Licensing Sale of Ardent Spirits—Mr. Cole introduced a petition from citizens of the State, in relation to the granting of license to vend spirituous liquors (p. 727).

48. Adjournment of Convention—Mr. Helmer introduced a petition from certain citizens of Harrodsburgh, Indiana, praying the Convention to adjourn sine die (p. 727).

49. Sections Passed by Convention—Mr. Owen presented a memorial from citizens of Posey county in relation to various sections passed by the Convention (p. 741).

50. Sections Passed by Convention—Mr. Lockhart presented a memorial from citizens of Posey county in relation to various sections passed by the Convention (p. 750).

51. Tenure of Office of Pilots on the Ohio River—Mr. Read of Clark presented a petition from citizens of Jeffersonville, in regard to the tenure of office of the pilots at the Falls of the Ohio River (p. 796).

52. Rights of Married Women—Mr. Kinley presented a petition signed by women of Henry county in relation to the rights of married women (p. 820).

## 141. Constitution of the State of Indiana (1851).

*[From Original Enrolled Copy.]*

## PREAMBLE.

TO THE END, that justice be established, public order maintained, and liberty perpetuated; WE, the PEOPLE of the STATE OF INDIANA, grateful to ALMIGHTY GOD for the free exercise of the right to choose our own form of government, do ordain this CONSTITUTION.<sup>35</sup>

## ARTICLE 1.

## BILL OF RIGHTS.

Section 1. WE DECLARE, That all men are created equal; that they are endowed by their CREATOR with certain unalienable rights; that among these are life, liberty and the pursuit of happiness; that all power is inherent in the PEOPLE; and that all free governments are, and of right ought to be, founded on their authority, and instituted for their peace, safety, and well being. For the advancement of these ends, the PEOPLE have, at all times, an indefeasible right to alter and reform their government.<sup>36</sup>

35. Reported by Committee on Rights and Privileges on October 31, as follows:

We, the people of the State of Indiana, in order to establish justice, maintain public order, and perpetuate liberty, do ordain this Constitution (p. 165). Engrossed for third reading as follows:

We, the people of the State of Indiana, grateful to Almighty God for our freedom, in order to establish justice, maintain public order, and perpetuate liberty, do ordain this Constitution (pp. 320-22).

The amendment was adopted by a vote of 107-12. Passed on December 4, by a vote of 124-1 (p. 347).

Proposed Preambles:

(a) We, the people of the State of Indiana, acknowledging the gracious Providence of God in bestowing upon us the great and manifold blessings of a christian civilization; and in particular, in vouchsafing to us a condition of society in which the social, political, and religious rights conferred by Him on mankind are recognized and respected; for the protection of these rights, and the establishment of justice, liberty, and the general well-being, do solemnly ordain and establish this Constitution. Rejected by a vote of 43-72.

(b) We, the people of the State of Indiana, acknowledging our gratitude to God in permitting us to make choice of our form of government, in order to establish justice, maintain public order, and perpetuate liberty, do ordain this Constitution.

(c) We, the people of the State of Indiana, in Convention assembled, and having been permitted by the favor and patience of our constituents to remain here so long, do ordain this Constitution.

(d) We, the people of the State of Indiana, grateful to Almighty God for our freedom, civil and religious, in order to establish justice, maintain public order, and perpetuate liberty, do ordain this Constitution.

36. Reported by Committee on Rights and Privileges on October 31, as follows:

Sec. 1. We declare that all power is inherent in the people; and that all free governments are, and of right ought to be, founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends the people have



Section 2. All men shall be secured in the natural right to worship *Almighty God*, according to the dictates of their own consciences.

Section 3. No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

Section 4. No preference shall be given, by law, to any creed, religious society, or mode of worship; and no man shall be compelled to attend, erect, or support, any place of worship, or to maintain any ministry, against his consent.

Section 5. No religious test shall be required, as a qualification for any office of trust or profit.

Section 6. No money shall be drawn from the treasury, for the benefit of any religious or theological institution.<sup>37</sup>

Section 7. No person shall be rendered incompetent as a witness, in consequence of his opinions on matters of religion.<sup>38</sup>

at all times an inalienable right to alter and reform their government (p. 165). Engrossed by a vote of 79-44 as follows:

Sec. 1. We declare, that all power is inherent in the people; and that all free governments are, and of right ought to be, founded on their authority, and instituted for their peace, safety and happiness. For the advancement of these ends the people have at all times an inalienable right to alter and reform their government.

That the general, great and essential principles of liberty and free government may be recognized and unalterably established—

We declare, that all men are created equal; that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness (p. 348). Passed on December 5, by a vote of 114-10 (p. 351).

37. Reported by Committee on Rights and Privileges on October 31, as follows:

Sec. 2. All men shall be secured in the natural and indefeasible right to worship Almighty God, according to the dictates of their own consciences. No man shall be compelled to attend, erect, or support any place of worship or to maintain any ministry against his consent. No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience. No discrimination shall be made by law between religious societies, nor preference be given by law to any mode of worship. No money shall be drawn from the treasury for the benefit of any religious or theological institution (p. 165). Engrossed for third reading as follows:

Sec. 2. All men shall be secured in the natural and indefeasible right to worship Almighty God, according to the dictates of their own consciences. No man shall be compelled to attend, erect, or support any place of worship or sects, or to maintain any ministry against his consent. No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience. No preference shall be given by law to any religious societies or modes of worship or creeds, and no religious test shall be required as qualification to any office of trust or profit. No money shall be drawn from the treasury for the benefit of any religious or theological institution (p. 349). Passed on December 5, by a vote of 122-0 (p. 352).

Reported by Committee on Revision on February 1, divided into five short sections, constituting Sections 2, 3, 4, 5 and 6 of Article 1, of the Constitution as adopted.

38. Reported by Committee on Rights and Privileges on October 31, as follows:

Sec. 3. No religious test shall ever be required as a qualification for any office of trust or profit; and no person shall be rendered incompetent to be a witness in con-

Section 8. The mode of administering an oath or affirmation, shall be such as may be most consistent with, and binding upon, the conscience of the person, to whom such oath or affirmation may be administered.<sup>39</sup>

Section 9. No law shall be passed, restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely, on any subject whatever; but for the abuse of that right, every person shall be responsible.<sup>40</sup>

Section 10. In all prosecutions for libel, the truth of the matters alleged to be libellous may be given in justification.<sup>41</sup>

Section 11. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.<sup>42</sup>

Section 12. All courts shall be open; and every man, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered

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sequence of his opinions on matters of religion (p. 166). Engrossed for third reading as follows:

No person shall be rendered incompetent to be a witness in consequence of his opinions on matters of religion (p. 352). Passed on December 6, by a vote of 120-1 (p. 359).

39. Supplied by the Committee on Revision (p. 942).

40. Reported by Committee on Rights and Privileges on November 2, as follows:

Section 1. No law shall be passed restraining the free interchange of thought and opinions, or restricting the right to speak, write, or print freely, on any subject whatever. But for the abuse of that right every person shall be responsible (p. 187). Engrossed for third reading without amendment (p. 571). Passed on January 1, without vote (p. 578).

41. Reported by Committee on Rights and Privileges on November 2, as follows:

Sec. 2. In all prosecutions for libel, the truth of the matter alleged to be libellous may be given in justification, and the jury shall have the right to determine the law and the facts (p. 187). Engrossed for third reading without amendment (p. 571). Recommited on third reading with instructions to amend as follows:

Sec. 2. In all prosecutions for libel, as well in criminal as in civil cases, the truth of the matter alleged to be libellous may be given in justification, and the jury shall have the right, in all criminal cases, to determine the law and the facts (p. 579).

Reported by the Committee on Revision on February 1, divided into two shorter sections, constituting Sections 10 and 19 of Article 1 of the Constitution as adopted.

42. Reported by Committee on Rights and Privileges on October 31, as follows:

Sec. 6. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable search or seizure, shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized (p. 166). Engrossed for third reading without amendment (p. 353). Passed on December 6, by a vote of 120-1 (p. 359).

freely, and without purchase; completely, and without denial; speedily, and without delay.<sup>43</sup>

Section 13. In all criminal prosecutions, the accused shall have the right to a public trial, by an impartial jury, in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor.<sup>44</sup>

Section 14. No person shall be put in jeopardy twice for the same offense. No person in any criminal prosecution, shall be compelled to testify against himself.<sup>45</sup>

Section 15. No person arrested, or confined in jail, shall be treated with unnecessary rigor.<sup>46</sup>

43. Reported by Committee on Rights and Privileges on November 2, as follows:

Sec. 3. All courts shall be open, and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely and without purchase, completely and without denial, speedily and without delay (p. 187). Engrossed for third reading without amendment (p. 571). Passed on January 1, without vote (p. 579).

44. Reported by Committee on Rights and Privileges on November 2, as follows:

Sec. 5. In all criminal prosecutions the accused shall have public trial by an impartial jury of his peers, in the county in which the offense shall have been committed; he shall have the right to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof, to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor (p. 187). Engrossed for third reading as follows:

Sec. 5. In all criminal prosecutions the accused shall have a right to a public trial by an impartial jury, in the county in which the offense shall have been committed; he shall have the right to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof, to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor (p. 572). Passed on January 1, without vote (p. 579).

Amendments proposed and rejected: (1) Trial of accused in the county where the offence was committed, "unless for good cause shown, the court may direct a change of the place of trial to some other county." (2) That an accused "shall have the closing argument before the court or jury trying the same."

45. Reported by Committee on Rights and Privileges on November 2, as follows:

Sec. 6. No man shall be compelled to give evidence against himself. No man shall be put in jeopardy twice for the same offence (p. 187). Engrossed for third reading as follows:

Sec. 6. No person shall be compelled to give evidence against himself, in any criminal prosecution. No person shall be put in jeopardy twice for the same offence. (p. 572). Passed on January 1, without vote (p. 579).

46. Reported by Committee on Rights and Privileges on November 2, as follows:

Sec. 4. No person arrested or confined in jail, shall be treated with unnecessary rigor. No person shall be put on trial on any criminal charge, without public opportunity first had to offer rebutting testimony, and repel the charge in its inception (p. 187). Engrossed for third reading, by a vote of 93-28, as follows:

Sec. 4. No person arrested or confined in jail shall be treated with unnecessary rigor. The legislature may continue, abolish, or modify the grand jury system (p. 718). Passed on January 21, by a vote of 94-33 (p. 737).

The Committee on Revision reported that the section had been referred to them in the following form:

Sec. 4. No person arrested or confined in jail shall be treated with unnecessary rigor (p. 869). See Note 57, p. 302.

Amendments proposed and rejected: (1) That no person arrested or confined in



Section 16. Excessive bail shall not be required. Excessive fines shall not be imposed. Cruel and unusual punishments shall not be inflicted. All penalties shall be proportioned to the nature of the offense.<sup>47</sup>

Section 17. Offenses, other than murder or treason, shall be bailable by sufficient sureties. Murder or treason shall not be bailable, when the proof is evident, or the presumption strong.<sup>48</sup>

Section 18. The penal code shall be founded on the principles of reformation, and not of vindictive justice.<sup>49</sup>

Section 19. In all criminal cases whatever, the jury shall have the right to determine the law and the facts.<sup>50</sup>

Section 20. In all civil cases, the right of trial by jury shall remain inviolate.<sup>51</sup>

jail shall be treated with unnecessary rigor, or be put to answer any criminal charge but by presentment, indictment, or impeachment. (2) The following proposed supplemental provision was rejected by a vote of 51-67: No person shall be held to answer a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury; and all offensees, the punishment of which is by fine, or fine and imprisonment in the county jail alone, shall be prosecuted in such manner as shall be prescribed by law. (3) No person shall be put upon trial for any criminal charge which amounts to a felony, except upon presentment or indictment; and all crimes or misdemeanors, less than felonies, shall be tried in such manner as may be prescribed by law. Rejected by a vote of 54-67. (4) No person arrested or confined in jail shall be held to answer to any criminal charge, except in such manner as shall be prescribed by law. (5) No person arrested or confined in jail shall be treated with unnecessary rigor. No person shall be held to answer to any criminal charge, except in such manner as shall be prescribed by law.

47. Reported by Committee on Rights and Privileges on November 2, as follows:

Sec. 9. Excessive bail shall not be required. Excessive fines shall not be imposed. Cruel and unusual punishment shall not be inflicted. All penalties shall be proportioned to the nature of the offence (p. 187). Engrossed for third reading without amendment (p. 574). Passed on January 16, by a vote of 128-0 (p. 692).

Amendment proposed and rejected: (1) The penalty of death shall in no case be inflicted, unless it be for the crime of cool, premeditated, and deliberate murder.

48. Reported by Committee on Rights and Privileges on November 2, as follows:

Sec. 7. Offenses other than capital, shall be bailable by sufficient sureties. Capital offenses shall not be bailable when the proof is evident or the presumption great (p. 187). Engrossed for third reading as follows:

Sec. 7. Offenses other than murder or treason, shall be bailable by sufficient sureties. Murder or treason shall not be bailable when the proof is evident or the presumption great (p. 573). Read a third time on January 1, and passed without vote (p. 579).

Amendment proposed and rejected; (1) All offenses shall be bailable by sufficient sureties, the amount of such bail to be graduated according to the magnitude of the offense, and the circumstances of the accused party. Rejected by a vote of 9-90.

49. Proposed by Mr. Mareh on January 29, as an additional section; adopted without amendment and advanced to engrossment.

Sec. 4. The penal code of this State shall be founded on the principles of reformation and not of vindictive justice (p. 826). Passed without vote on January 30 (p. 835).

50. See Note 41, p. 297.

51. Reported by Committee on Rights and Privileges on October 26, as follows:

Sec. 2. In all civil cases where the amount in controversy shall exceed the sum of twenty dollars, and in all criminal [cases] whatever, the right of trial by jury shall remain inviolate (p. 138).. Amended on second reading as follows:

In all civil and criminal cases whatever, the right of trial by jury shall remain inviolate (p. 204). Passed on November 18, by a vote of 91-26 (p. 267).

Section 21. No man's particular services shall be demanded, without just compensation: No man's property shall be taken by law, without just compensation; nor, except in case of the State, without such compensation first assessed and tendered.<sup>52</sup>

Section 22. The privilege of the debtor to enjoy the necessary comforts of life, shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale, for the payment of any debt or liability hereafter contracted; and there shall be no imprisonment for debt, except in case of fraud.<sup>53</sup>

52. Reported by Committee on Rights and Privileges on October 26, as follows:

Sec. 3. No man's personal services shall be demanded without just compensation. No man's property shall be taken by law without just compensation first assessed by a jury of freeholders and tendered to the owner, by the person to be benefited—but such tender, if rejected, shall not bar the right of appeal (p. 138). Amended on second reading as follows:

Sec. 3. No man's particular services shall be demanded without just compensation. No man's property shall be taken by law without just compensation; nor, except in case of the State, without such compensation first assessed and tendered to the owner (p. 221). Passed on November 18, by a vote of 91-26 (p. 267).

Amendments proposed and rejected: (1) requiring the consent of representatives in taking property for public use. (2) requiring that compensation be first made before taking property for public use. Both lost by vote of 9-120. (3) prohibiting corporations' taking private property without first tendering compensation. (4) requiring that property taken for public use must be paid for 'in money, irrespective of extrinsic benefits,' lost by a vote of 63-65. (5) prohibiting the taking of private property against the owner's consent except for the defense of the state and the right of way of public improvements, lost by a vote of 35-85. (6) Property taken by a corporation must first be assessed by a jury at its cash value, lost by vote of 16-105. (7) If the owner is a non-resident, feme covert, infant, idiot or lunatic or otherwise incapacitated, the assessment may be paid to the clerk of the court, reserving to either party the right of appeal.

53. Reported by the Committee on Rights and Privileges on October 26, as follows:

Section 1. There shall not be imprisonment for debt, except in case of strong presumption of fraud (p. 138). Amended on second reading as follows:

Sec. 1. There shall be no imprisonment for debt, except in cases of fraud (p. 203). Passed on November 18 by a vote of 91-26 (p. 267).

On October 29, the Committee on Rights and Privileges reported the following section:

Section 1. The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale, for the payment of any debt or liability hereafter contracted (p. 148). Advanced to third reading without amendment by a vote of 117-11 (p. 299). Passed on November 27 by a vote of 108-18 (p. 306).

On November 7, the Committee on Rights and Privileges reported the following section:

Section 1. There shall be no imprisonment for debt, except in case of fraud (p. 210). Engrossed without amendment (p. 726). Passed on January 21, without vote (p. 740). This section is identical with the section as reported on October 26, and as subsequently amended on second reading.

Reported by the Committee on Revision on February 1, the three sections being consolidated to constitute Section 22 of Article 1 of the Constitution as adopted.

Amendments proposed and rejected: (1) permitting imprisonment for debt in case of fraudulent concealment and refusal to surrender. (2) manumission of a debtor on surrendering his property for the benefit of his creditors. (3) prohibiting imprisonment for debt even in case of fraud. (4) providing exemptions of both real and personal property, rejected by a vote of 43-82. (5) specifically exempting a home-

Section 23. The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens.<sup>54</sup>

Section 24. No *ex post facto* law, or law impairing the obligation of contracts, shall ever be passed.<sup>55</sup>

Section 25. No law shall be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution.<sup>56</sup>

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stead of the value of \$500, saving mechanics' liens and mortgages, provided the mortgaging or alienation be validated by the wife's signature, rejected by a vote of 28-84. (6) exempting property, real and personal of the value of \$500, rejected by a vote of 39-81. (7) exempting real and personal property of the value of \$400, rejected by a vote of 43-82. (8) exempting \$300 worth of property, rejected by a vote of 42-87. (9) securing certain privileges to the debtor if the head of a family. (10) exempting an amount of property proportionate to the necessities of the debtor. (11) exempting the homestead to such extent as the legislature may prescribe.

54. Proposed by Mr. Read of Monroe on January 1, as an additional section; adopted by a vote of 80-41 and advanced to engrossment without amendment (p. 584).

See. 19. The General Assembly shall not grant to any citizen, or class of citizens, privileges and immunities which, upon the same terms, shall not belong equally to all citizens (p. 584). Passed on January 2, by a vote of 89-30 (p. 591).

Amendments proposed and rejected: (1) but where rights and immunities have been or may hereafter become vested by law in any company, citizen, or citizens, the General Assembly shall have no power to impair the same. (2) that nothing in this section shall be so construed as to authorize the legislature to enact a free banking law. Rejected by a vote of 67-56. (3) nothing in this section shall be construed to prevent the legislature from establishing a state bank and branches. Rejected by a vote of 59-64. (4) Providing that the section is intended to authorize the legislature to incorporate free banks and no others. Rejected by a vote of 13-105. (5) by addition: nor authorize in any manner a monopoly of the proceeds of the college and school funds to promote the higher branches of education, but the same shall be distributed for the benefit of common schools. Rejected by a vote of 45-72.

55. Reported by Committee on the Legislative Department on October 31, as follows:

See. 27. No *ex post facto* law or laws, either impairing the obligation of contracts or giving effect to contracts otherwise void, shall ever be passed (p. 169). Engrossed for third reading as follows:

No *ex post facto* law, or law impairing the obligation of contracts shall ever be passed, and no conviction shall work corruption of blood or forfeiture of estate (p. 495). Passed on December 21, without vote (p. 502).

Reported by Committee on Revision on February 1, divided into two shorter sections, constituting Sections 24 and 30 of Article 1 of the constitution as adopted.

The following section was reported by the Committee on Rights and Privileges on November 2.

See. 10. No *ex post facto* law, nor law impairing the obligation of contracts, shall be passed (p. 188). Laid on the table on second reading (p. 574).

Amendment proposed and rejected: (1) to strike out the Latin phrase *ex post facto* and insert its English equivalent.

56. Proposed by Mr. Read of Monroe on December 20, as an additional section; adopted without amendment and advanced to engrossment.

Sec. 39. No law shall be passed, the taking effect of which shall be made to depend upon any authority except as provided in this Constitution (p. 496). Passed on December 21, by a vote of 68-38 (p. 502).

An unsuccessful attempt was made on third reading to except the question of banking.



Section 26. The operation of the laws shall never be suspended, except by the authority of the General Assembly.<sup>57</sup>

Section 27. The privilege of the writ of *habeas corpus* shall not be suspended, except in case of rebellion or invasion; and then, only if the public safety demand it.<sup>58</sup>

Section 28. Treason against the State shall consist only in levying war against it, and in giving aid and comfort to its enemies.<sup>59</sup>

Section 29. No person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or upon his confession in open court.<sup>60</sup>

Section 30. No conviction shall work corruption of blood, or forfeiture of estate.<sup>61</sup>

Section 31. No law shall restrain any of the inhabitants of the State from assembling together in a peaceable manner, to consult

57. Reported by Committee on Rights and Privileges on October 31, as follows:

Sec. 5. The operation of the laws shall never be suspended except by the authority of the legislature (p. 166). Engrossed for third reading without amendment (p. 353). Passed on December 6, by a vote of 120-1 (p. 359).

The Committee on Revision reported that the section had been referred to them in the following form, but the last sentence, providing that "the legislature may continue, abolish, or modify the grand jury system," was certainly attached to and made a part of Section 15 of Article 1 of the Constitution as adopted. See Note 46, p. 298.

Sec. 5. The operation of the laws shall never be suspended, except by the authority of the General Assembly. The legislature may continue, abolish, or modify the grand jury system (p. 869).

58. Reported by Committee on Rights and Privileges on November 2, as follows:

Sec. 8. The privilege of the writ of *habeas corpus* shall not be suspended, except in case of rebellion or invasion; and then only if public safety demand it (p. 187). Engrossed for third reading without amendment (p. 573). Passed on January 1, without vote (p. 579).

Amendments proposed and rejected: (1) to insert "have the body" for "habeas corpus." (2) to substitute the following: No person unlawfully imprisoned or restrained of his liberty, under any pretense whatsoever, shall ever be deprived of the right of being personally brought before some tribunal or officer, for the purpose of having the cause of such imprisonment or restraint inquired into, and justice done in the premises. Rejected by a vote of 45-69.

59. Reported by Committee on Criminal Law on November 4, as follows:

Sec. 1. Treason against the State shall consist in levying war against it, and in giving aid and comfort to its enemies (p. 192). Advanced to engrossment as follows:

Sec. 1. Treason against the State shall only consist in levying war against it, and in giving aid and comfort to its enemies (p. 595). Passed without vote on January 3 (p. 600).

60. Reported by Committee on Criminal Law on November 4, as follows:

Sec. 2. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on his confession in open court (p. 192). Engrossed for third reading without amendment (p. 595). Passed without vote on January 3 (p. 600).

61. See Note 55, p. 301.

On November 2, the following section was reported by the Committee on Rights and Privileges:

Sec. 11. No conviction shall work corruption of blood or forfeiture of estate (p. 188). Laid on the table on second reading (p. 574).

for their common good; nor from instructing their representatives; nor from applying to the General Assembly for redress of grievances.<sup>62</sup>

Section 32. The people shall have a right to bear arms, for the defense of themselves and the State.<sup>63</sup>

Section 33. The military shall be kept in strict subordination to the civil power.

Section 34. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor, in time of war but in a manner to be prescribed by law.<sup>64</sup>

Section 35. The General Assembly shall not grant any title of nobility, nor confer hereditary distinctions.<sup>65</sup>

Section 36. Emigration from the State shall not be prohibited.

62. Reported by Committee on Rights and Privileges on October 31, as follows:

Sec. 7. No law shall restrain any of the inhabitants of this State from assembling together in a peaceable manner; nor from instructing their representatives; nor from applying to the legislature for redress of grievances (p. 166). Engrossed for third reading without amendment (p. 353). Passed on December 6, by a vote of 120-1 (p. 359).

63. Reported by Committee on Rights and Privileges on November 2, as follows:

Sec. 12. No law shall restrict the right of the people to bear arms, whether in defence of themselves or of the State (p. 188). Engrossed for third reading, without amendment (p. 574). Recommended on third reading with instructions to amend so as to read as follows:

Sec. 12. That the people have a right to bear arms for the defense of themselves and the State (p. 580). Reported back to the convention as follows; the report being concurred in, and the section passed without vote on January 14.

Sec. 12. The people shall have a right to bear arms for the defense of themselves and the State (p. 665).

Amendments proposed and rejected: (1) to provide that arms must be borne "in an open and unconcealed manner." (2) "No law shall be passed restricting the right of the people to carry visible arms."

64. Reported by Committee on Rights and Privileges on November 2, as follows:

Sec. 13. The military shall be kept in strict subordination to the civil power (p. 188).

Sec. 14. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in manner to be prescribed by law (p. 188). Engrossed for third reading without amendment (p. 574). Passed on January 1, without vote (p. 580).

65. Reported by Committee on Rights and Privileges on November 2, as follows:

Sec. 15. The legislature shall bestow no title of nobility, nor confer any hereditary distinctions, nor grant extraordinary privileges (p. 188). Engrossed for third reading as follows, the amendment thereto being adopted by a vote of 70-52.

Sec. 15. The legislature shall bestow no title of nobility, nor confer any hereditary distinctions, nor grant to any citizen or class of citizens privileges and immunities, which upon the same terms shall not belong equally to all citizens (p. 575). Subsequently the vote on engrossment was reconsidered by a vote of 59-54; the section was amended to read as follows, and advanced to engrossment.

Sec. 15. That the legislature shall not grant any title of nobility or hereditary distinctions, nor grant any extraordinary privileges (p. 582). Passed on January 2, without vote (p. 590).

Amendment proposed and rejected: (1) Providing that the section shall not be construed to prevent the legislature from establishing a state bank. Rejected by a vote of 53-69.

Section 37. There shall be neither slavery, nor involuntary servitude, within the State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted. No indenture of any Negro or Mulatto, made and executed out of the bounds of the State, shall be valid within the State.<sup>66</sup>

## ARTICLE 2.

### SUFFRAGE AND ELECTION.

Section 1. All elections shall be free and equal.<sup>67</sup>

Section 2. In all elections, not otherwise provided for by this Constitution, every white male citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during the six months immediately preceding such election; and every white male, of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization; shall be entitled to vote, in the township or precinct where he may reside.

Section 3. No soldier, seaman, or marine, in the army or navy of the United States, or of their allies, shall be deemed to have acquired a residence in the State, in consequence of having

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66. Reported by Committee on Rights and Privileges on November 2, as follows:  
Sec. 17. Emigration from the State shall not be prohibited (p. 188).

Sec. 18. There shall be neither slavery nor involuntary servitude within this State, otherwise than for punishment of crimes whereof the party shall have been duly convicted. No indenture of any negro or mulatto made and executed out of the bounds of this State shall be valid within the State (p. 188). Engrossed for third reading without amendment (pp. 592-93). Passed without vote on January 3 (p. 600). Reported by the Committee on Revision on February 1, and approved by a vote of 91-14 (pp. 871, 880). This entire article was reported by the Committee on Revision on February 1, and approved by a vote of 91-14 (pp. 871, 880).

Amendments proposed and rejected: (1) to strike out that "No indenture of any negro or mulatto made and executed out of the bounds of this State shall be valid within the State." (2) to strike out the clause relative to foreign indentures of negroes and mulattoes and insert: "And it shall be the duty of the General Assembly at its first session after the adoption of this Constitution, to pass such laws as shall forever prohibit negroes or mulattoes from emigrating to this State."

67. Reported by Committee on Rights and Privileges on October 31, as follows:

Sec. 4. All elections shall be free and equal (p. 166). Engrossed for third reading without amendment (p. 352). Passed on December 6, by a vote of 120-1 (p. 359).

Amendments proposed and rejected: (1) To strike out the entire section. (2) "All elections shall be free and easy."



been stationed within the same; nor shall any such soldier, seaman, or marine, have the right to vote.<sup>68</sup>

Section 4. No person shall be deemed to have lost his residence in the State by reason of his absence, either on business of this State or of the United States.<sup>69</sup>

Section 5. No Negro or Mulatto shall have the right of suffrage.<sup>70</sup>

Section 6. Every person shall be disqualified from holding office, during the term for which he may have been elected, who

68. Reported by Committee on Franchise and Apportionment on October 31, as follows:

Sec. 1. In all elections not otherwise provided for by this Constitution, every white male citizen of the United States, of the age of twenty-one years and upwards, who has resided in the State six months immediately preceding such election, and every white male of foreign birth of the age of twenty-one years and upwards, having resided in the United States one year, and having declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, and having resided in this State six months immediately preceding such election, shall be entitled to vote in the township where he resides except such as shall be enlisted in the army of the United States or their allies (p. 171). Advanced to engrossment by a vote of 86-17, as follows:

Sec. 1. In all elections not otherwise provided for by this constitution, every white male citizen of the United States, of the age of twenty-one years and upwards, who has resided in the State six months immediately preceding such election, and every white male of foreign birth of the age of twenty-one years and upwards, having resided in the United States one year, and having declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, and having resided in this State six months immediately preceding such election, shall be entitled to vote in the township or precinct where he resides, except such as shall be enlisted in the army of the United States or their allies (pp. 518, 523). Passed on December 26 by a vote of 89-10 (p. 532). Reported by the Committee on Revision on February 5, divided into two shorter sections, constituting Sections 2 and 3 of Article 2, of the Constitution as adopted.

Amendments proposed and rejected: (1) to strike out "township" and insert "county." (2) making the payment of a tax of one dollar during the preceding year a qualification for voting. (3) to strike out "in the township or precinct where he resides" and insert "in such place as may be prescribed by law." Rejected by a vote of 30-73. (4) to prescribe citizenship in this State instead of the United States as a qualification for voting and to strike out the provision requiring foreigners to reside in the State six months before voting. (5) In all elections, not otherwise provided for by this Constitution, every white male citizen of the United States, of the age of twenty-one years and upwards, who has resided in the State one year immediately preceding such election, shall be entitled to vote in the county where he resides, except such as shall be enlisted in the armies of the United States or their allies. Rejected by a vote of 14-90.

69. Reported by Committee on Franchise and Apportionment on October 31, as follows:

Sec. 5. No person shall be deemed to have lost his residence in this State by reason of his absence on business of the United States, or of this State (p. 172). Advanced to engrossment without amendment (p. 525). Passed on December 26, without vote (p. 532).

70. Reported by the Committee on Elective Franchise on November 7, as follows:

Sec. 1. No negro or mulatto shall have the right of suffrage (p. 209). Engrossed without amendment (p. 726). Passed without vote, under suspension of the rules, on January 21 (p. 740).

shall have given or offered a bribe, threat, or reward, to procure his election.<sup>71</sup>

Section 7. Every person who shall give or accept a challenge to fight a duel, or who shall knowingly carry to another person such challenge, or who shall agree to go out of the State to fight a duel, shall be ineligible to any office of trust or profit.<sup>72</sup>

Section 8. The General Assembly shall have power to deprive of the right of suffrage, and to render ineligible, any person convicted of an infamous crime.<sup>73</sup>

Section 9. No person holding a lucrative office or appointment, under the United States or under this State, shall be eligible to a seat in the General Assembly; nor shall any person hold more than one lucrative office at the same time, except as in this Constitution expressly permitted: Provided, that offices in the militia to which there is attached no annual salary, and the office of Deputy Postmaster, where the compensation does not exceed ninety dollars per annum, shall not be deemed lucrative: And provided, also, that counties containing less than one thousand polls, may confer the office of Clerk, Recorder, and Auditor, or any two of said offices, upon the same person.<sup>74</sup>

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71. Reported by Committee on Franchise and Apportionment on October 31, as follows:

See. 6. Every person shall be disqualified from holding office for the term for which he shall have been elected; who shall have been convicted of having given or offered any bribe, threat, or reward to procure his election (p. 172). Engrossed for third reading, as follows:

Sec. 6. Every person shall be disqualified from holding office for the term for which he shall have been elected; who shall have given or offered any bribe, threat, or reward to procure his election (p. 526). Passed on December 26 without vote (p. 532).

Amendments proposed and rejected: (1) to strike out "for the term for which he shall have been elected." (2) to strike out the word "threat" and insert "treat."

72. Reported by Committee on Criminal Law on November 8, as follows:

See. 1. Every person who shall give or accept a challenge to fight a duel, or who shall knowingly carry to another person a challenge to fight a duel, or who shall agree to go out of the State to fight a duel, shall be ineligible to hold any office of trust or profit (p. 214). Engrossed without amendment (p. 726). Passed on January 21 without vote (p. 740).

73. Reported by Committee on Franchise and Apportionment on October 31, as follows:

See. 4. The General Assembly shall have power to exclude from electing, or being elected, any person convicted of any infamous crime (p. 172). Advanced to engrossment without amendment (p. 525). Passed on December 26 without vote (p. 532).

74. Reported by the Committee on the Legislative Department on October 31, as follows:

Sec. 6. No person holding any lucrative office under the United States, or this State, shall be eligible to a seat in either branch of the General Assembly: Provided, That officers in the militia to which there is attached no annual salary, and the office of postmaster when the compensation does not exceed five hundred dollars per annum, shall not be deemed lucrative (p. 167). Engrossed for third reading, as follows:

See. 6. No person holding any lucrative office or appointment under the United States, or this State, shall be eligible to a seat in either branch of the General

Section 10. No person who may hereafter be a collector or holder of public moneys, shall be eligible to any office of trust or

Assembly: Provided, That officers in the militia to which there is attached no annual salary shall not be deemed lucrative (p. 391.) Passed on December 10 by a vote of 108-11 (p. 399).

On October 31, the Committee on Salaries, Compensation and Tenure of office reported the following section:

Sec. 1. No person shall hold more than one lucrative office at the same time, except as in this Constitution is expressly permitted (p. 173). Advanced to engrossment as follows, the proviso being adopted by a vote of 66-30.

Sec. 1. No person shall hold more than one lucrative office at the same time, except as in this Constitution is expressly permitted. Provided, That counties casting less than one thousand votes may confer the offices of clerk, recorder and auditor, or any two of said offices upon one person (p. 529).

Recommitted to the committee by a vote of 54-49 with instructions to add: "Provided, however, That the office of postmaster, when the compensation does not exceed ninety dollars per annum, shall not be deemed lucrative." Reported back to the Convention as follows:

Sec. 1. No person shall hold more than one lucrative office at the same time, except as in this Constitution expressly permitted: Provided, That counties casting less than one thousand votes may confer the offices of clerk, recorder, and auditor, or any two of said offices upon one person: Provided, however, That the office of postmaster, where the compensation does not exceed ninety dollars per annum, shall not be deemed lucrative (p. 570). Immediately recommitted to the committee with instructions to strike out the words "casting less than one thousand votes," and insert "containing less than one thousand polls" (p. 570). Reported back to the Convention on January 3, as follows:

Sec. 1. No person shall hold more than one lucrative office at the same time, except as in this Constitution expressly permitted: Provided, That counties containing less than one thousand polls may confer the offices of clerk, recorder, and auditor, or any two of said offices upon one person: Provided, however, That the office of postmaster, when the compensation does not exceed ninety dollars per annum, shall not be deemed lucrative (p. 597). Passed by a vote of 85-41. A proposed amendment to strike out the amendment was rejected by a vote of 40-94. A second proposed amendment to strike out the word "postmaster" and insert "any office the fees of which do not exceed fifty dollars per annum" was likewise rejected. Reported by the Committee on Revision on February 5, consolidated to constitute Section 9 of Article 2 of the Constitution as adopted. Proposed additional section.

Sec. —. Every person elected to any office of profit shall be ineligible to any other lucrative office during the continuance of the term for which he may have been elected: Provided, That this section shall not apply to justices of the peace or to any township, town, or municipal office (p. 526). Rejected by a vote of 43-57 (p. 526).

Amendments proposed and rejected: to proposed additional section: (1) permitting the clerk of the circuit court to perform the duties of county auditor or recorder; (2) exempting postmasters whose office is not worth \$100 per annum, rejected by a vote of 49-50; (3) prohibiting justices of the peace, township, town and municipal officers from holding an additional lucrative office, rejected by a vote of 35-62. To reported section 6: (1) to strike out the proviso; (2) to disqualify persons who during one year previous have been presidents, directors, secretaries, attorneys, or other officers or agents of any bank, insurance or railroad company and attorneys-at-law from seats in the General Assembly. Rejected by a vote of 58-67. To reported section 1: (1) permitting counties containing less than 1,000 free white male inhabitants to confer the offices of clerk, recorder and auditor or any two of them on the same person; (2) restricting the exemption to counties casting less than 700 votes; less than 500; and containing less than 1,000 white male inhabitants over the age of twenty-one years.



profit, until he shall have accounted for, and paid over, according to law, all sums for which he may be liable.<sup>75</sup>

Section 11. In all cases in which it is provided, that an office shall not be filled by the same person more than a certain number of years continuously, an appointment pro tempore shall not be reckoned a part of that term.<sup>76</sup>

Section 12. In all cases, except treason, felony, and breach of the peace, electors shall be free from arrest, in going to elections, during their attendance there, and in returning from the same.<sup>77</sup>

Section 13. All elections by the People shall be by ballot; and all elections by the General Assembly, or by either branch thereof, shall be viva voce.<sup>78</sup>

75. Reported by Committee on the Legislative Department on October 31, as follows:

Sec. 23. No person who may hereafter be a collector or holder of public moneys, shall be eligible to a seat in either branch of the General Assembly, or to any office of trust or profit under this State, until he shall have accounted for and paid, as by law of this State required, all sums for which he may be liable (p. 169). Engrossed for third reading without amendment (p. 466). Passed on December 19 without vote (p. 484).

Amendments proposed and rejected: (1) to exclude attorneys at law who shall have received or collected the money of another, and fail or refuse to pay the same over to the proper person or authority on demand made, or any other man who does not pay his debts when due.

76. Reported by Committee on County and Township Organization on October 29, as follows:

Sec. 3. No person shall be rendered ineligible to any office in this article provided, by reason of his appointment pro tem. to such office (p. 150). Engrossed for third reading without amendment (p. 313). Passed on December 3, by a vote of 114-0 (p. 339).

77. Reported by Committee on Franchise and Apportionment on October 31, as follows:

Sec. 3. Electors shall, in all cases except treason, felony, or breach of the peace, be free from arrest in going to, during their attendance at, and in returning home from elections (p. 172). Advanced to engrossment without amendment (p. 524). Passed on December 26, without vote (p. 532).

78. Reported by the Committee on the Legislative Department on October 31, as follows:

Sec. 21. All elections by the General Assembly, or either branch thereof, shall be by a viva voce vote; and the vote shall be entered on the journal (p. 169). Engrossed for third reading without amendment (p. 465). Passed on December 19, by a vote of 109-4 (p. 481). On October 31, the Committee on Franchise and Apportionment reported the following section:

Sec. 2. All elections, not otherwise provided for in this constitution shall be by ballot (p. 172). Advanced to engrossment without amendment (p. 524). Passed on December 26, without vote (p. 532). Reported by the Committee on Revision on February 5, consolidated to constitute Section 13 of Article 2 of the Constitution as adopted.

Amendments proposed and rejected: (1) to provide that a plurality of votes by the General Assembly shall elect; (2) that all elections by the General Assembly shall be by ballot; (3) that each ballot cast by an elector shall be numbered to agree with a similar number opposite his name; (4) to require that all voting shall be viva voce.

Section 14. All general elections shall be held on the second Tuesday in October.<sup>79</sup>

## ARTICLE 3.

### DISTRIBUTION OF POWERS.

Section 1. The powers of the Government are divided into three separate departments; the Legislative, the Executive including the Administrative, and the Judicial; and no person charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided.<sup>80</sup>

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79. Reported by Committee on Elective Franchise and Apportionment on November 1, as follows:

Sec. 1. All general elections shall be held on the first Tuesday in October, biennially (p. 181). Engrossed for third reading as follows:

Sec. 1. All general elections shall be held on the second Tuesday in October (p. 552). Read a third time on December 30 and passed without vote (p. 564). The entire article except sections 10 and 14, was reported by the Committee on Revision on February 5; section 10, was reported on February 6, and section 14 on February 8. All were approved by consent (pp. 908, 920, 926, 975).

Amendments proposed and rejected: (1) fixing the date of general elections on the first Tuesday in September; (2) fixing the date of general elections on the second Tuesday in August. Rejected by a vote of 11-100.

80. Reported by Committee on Miscellaneous Provisions on January 21, as follows:

Section 1. The powers of the Government of Indiana shall be divided into three distinct departments, and each of them be confined to a separate body of magistracy to-wit: Those which are legislative, to one; those which are executive, to another; and those which are judiciary, to another; and no person or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

Sec. 2. From and after the first day of January, in the year 1880, the General Assembly shall have power to revoke the charter of all corporations whose charters shall not have expired previous to that time, and no corporation hereafter to be created, shall ever endure for a longer term than twenty-five years, except those which are political or municipal.

Sec. 4. The number of inhabitants in the several counties of this State, together with the agricultural, manufacturing, and other general statistics thereof, shall be taken in the year 1855, and every ten years thereafter, in such manner as may be prescribed by law.

Sec. 5. The legislature shall have power, whenever it may deem the public good requires it, to repeal all banking charters, or laws granting banking privileges of any kind (pp. 732-33).

Section 1. was engrossed without amendment (p. 844). Passed on January 31, without vote (p. 857). Section 2, was laid on the table on second reading (p. 844). Section 4, was laid on the table on second reading (p. 848). Section 5, was advanced to engrossment by a vote of 76-47 as follows:

Sec. 5. The legislature shall have power, whenever it may deem the public good requires it, to amend or repeal all banking charters, or laws granting banking privileges of any kind (p. 848). Failed to pass on January 31, by a vote of 51-73 (p. 857). Reported by the Committee on Revision on February 5, and approved by consent (pp. 908, 920).

## ARTICLE 4.

## LEGISLATIVE.

Section 1. The Legislative authority of the State shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives. The style of every law shall be: "Be it enacted by the General Assembly of the State of Indiana;" and no law shall be enacted, except by bill.<sup>81</sup>

Section 2. The Senate shall not exceed fifty, nor the House of Representatives one hundred members; and they shall be chosen by the electors of the respective counties or districts, into which the State may, from time to time, be divided.<sup>82</sup>

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81. Reported by Committee on Legislative Department on October 31, as follows:

Sec. 1. The legislative authority of this State shall be vested in a General Assembly, which shall be designated the General Assembly of the State of Indiana, and shall consist of a Senate and House of Representatives and the enacting clause of every law shall be: "Be it enacted by the General Assembly of the State of Indiana" (p. 166). Amended and engrossed for third reading as follows:

Sec. 1. The legislative authority of this State shall be vested in a General Assembly which shall consist of a Senate and House of Representatives, and the enacting clause of every law shall be: "Be it enacted by the General Assembly of the State of Indiana" (p. 354). Passed on December 6, by a vote of 124-0 (p. 360).

Amendment proposed and rejected: (1) to provide for a General Assembly of one house only.

82. Reported by the Committee on Legislative Department on October 31, as follows:

Sec. 2. The Senate shall consist of not less than one third, nor more than one half of the number of the members of the House, and the House of Representatives shall consist of not less than sixty, nor more than seventy-five members—to be chosen by the qualified electors of their separate counties, or of the districts into which the State may from time to time be divided (p. 166). Amended on second reading as follows:

The Senate shall consist of not exceeding fifty members, and the House of Representatives of not exceeding one hundred members, to be chosen by the qualified electors of their respective counties or districts, into which the State may from time to time be divided (pp. 358, 375). Passed on December 7, by a vote of 73-47 (p. 386).

On November 2, the Committee on Elective Franchise and Apportionment reported the following section:

Sec. 1. The Senate shall consist of thirty-four members, and the House of Representatives of one hundred, to be elected by the qualified electors of their respective counties, or by the districts into which the State may, from time to time be divided (p. 188). Laid on the table on second reading (p. 593).

Amendments proposed and rejected: (1) fixing the membership of the House at not less than 60 nor more than 100 members, rejected by vote of 63-64. (2) fixing the membership of the House at not to exceed 120, and guaranteeing each county at least one member, rejected by a vote of 46-80. (3) fixing the membership of the House at one member for each organized county of the State, rejected by a vote of 59-67. (4) fixing the membership of the senate at 50, the House at 100, and in case a county was entitled to more than one representative, authorizing the division of the county into representative districts according to population, rejected by vote of 39-87. (5) fixing the membership of the Senate at 40 and the House at 80, rejected by a vote of 38-89. (6) fixing the membership of the Senate at 50 and the House at 100, rejected by a vote of 63-65. (7) that each organized county having two-thirds of the ratio necessary for a representative shall be entitled to one representative; after 1860, the General Assembly may increase the number of representatives to 120; (8) fixing



Section 3. Senators shall be elected for the term of four years and Representatives for the term of two years, from the day next after their general election: Provided, however, that the Senators elect, at the second meeting of the General Assembly under this Constitution, shall be divided by lot, into two equal classes, as nearly as may be; and the seats of Senators of the first class shall be vacated at the expiration of two years, and those of the second class, at the expiration of four years; so that one half as nearly as possible, shall be chosen biennially forever thereafter. And in case of increase in the number of Senators, they shall be so annexed, by lot, to one or the other of the two classes, as to keep them as nearly equal as practicable.<sup>83</sup>

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the maximum limit of representatives at 150; (9) that each county be entitled to at least one representative, rejected by vote of 48-76. (10) fixing membership of Senate at 30 and House at 70, rejected by vote of 56-65. (11) Provided, that after the year 1860, upon the petition of the qualified voters of any county in this State, the legislature shall cause a vote to be taken at a general election, held for the purpose of electing state officers, and if it shall appear that a majority of all the votes cast at said election shall be in favor of an additional ratio of representation, then it shall be the duty of the legislature to make such additional ratio of representation as shall be necessary. Provided, also, that these shall never exceed 120; (12) fixing membership of Senate at 34 and House at 116, each county having 1,000 voters to be entitled to one representative, rejected by vote of 24-94; (13) membership of Senate 50, House 100, which after 1860 may be increased to 120, rejected by vote of 24-94.

83. Reported by Committee on Legislative Department on October 31, as follows:

Sec. 4. Senators shall be chosen for the term of four years, and representatives for the term of two years from the day next after their general election, except that the term of service of one half of the senators first elected under this Constitution, or if the whole number be an uneven one, then the term of service of one less than half shall expire at the end of two years, and for the purpose of ascertaining whose term of service shall first expire, the senators-elect, at the first meeting of the General Assembly under the new Constitution, shall be divided by lot, into two equal classes, as near as may be; and the seats of the senators of the first class shall be vacated at the expiration of two years, and of the second class at the expiration of four years, so that one half, as near as possible, shall be chosen biennially forever thereafter, and in case of increase of the number of senators at any time, these shall be so annexed by lot to one or the other of the two classes, as to keep them as nearly equal as practicable (p. 167). Engrossed for third reading as follows:

Sec. 4. Senators shall be chosen for the term of four years, and representatives for the term of two years from the day next after their general election, except that the term of service of one half of the senators first elected under this Constitution, or if the whole number be an uneven one, then the term of service of one less than half shall expire at the end of two years and the senators-elect, at the first meeting of the General Assembly under the new Constitution, shall be divided by lot, into two equal classes, as near as may be; and the seats of the senators of the first class shall be vacated at the expiration of two years, and of the second class at the expiration of four years, so that one half, as near as possible, shall be chosen biennially forever thereafter, and in case of increase of the number of senators at any time, these shall be so annexed by lot to one or the other of the two classes, as to keep them as nearly equal as practicable (p. 389). Passed on December 10, by a vote of 116-6 (p. 397).

Amendments proposed and rejected: (1) to strike out the provision that senators added may be annexed by lot to one of the two classes; (2) to strike out and insert: senators and representatives shall be chosen for the term of two years from the day next after their general election, rejected by vote of 37-86.

Section 4. The General Assembly shall, at its second session after the adoption of this Constitution, and every sixth year thereafter, cause an enumeration to be made of all the white male inhabitants over the age of twenty-one years.<sup>84</sup>

Section 5. The number of Senators and Representatives shall, at the session next following each period of making such enumeration, be fixed by law, and apportioned among the several counties, according to the number of white male inhabitants, above twenty-one years of age in each: Provided, that the first and second elections of members of the General Assembly, under this Constitution, shall be according to the apportionment last made by the General Assembly, before the adoption of this Constitution.<sup>85</sup>

Section 6. A Senatorial or Representative district, where more than one county shall constitute a district, shall be composed of contiguous counties; and no county for Senatorial apportionment, shall ever be divided.<sup>86</sup>

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84. Reported by Committee on Elective Franchise on December 11, as follows:

Section 1. The General Assembly shall at their first meeting after the adoption of this Constitution, and every six years thereafter, cause an enumeration to be made of all the white male inhabitants above the age of twenty-one years (p. 407). Engrossed without amendment (p. 801). Passed on January 28, without vote (p. 815). On November 2, the Committee on Elective Franchise reported the following section:

Sec. 2. The General Assembly shall, every six years after the adoption of this Constitution, make an equitable distribution of the above named number of senators and representatives among the several counties and districts: Provided always, That no county shall be divided for senatorial or representative purposes (p. 188). Laid on the table on second reading (p. 593).

85. Reported by Committee on Elective Franchise on December 11, as follows:

Sec. 2. The number of senators and representatives shall at the several periods of making such an enumeration be fixed by law and apportioned among the several counties according to the number of white male inhabitants above twenty-one years of age in each: Provided, The first election of members of the General Assembly under this constitution shall be according to the apportionment made by the legislature at its session of 1850-51 (p. 407). Engrossed for third reading without amendment (p. 801). Passed without vote on January 28 (p. 815).

86. Reported by the Committee on the Legislative Department on October 31, as follows:

Sec. 3. Senatorial and representative districts, when more than one county shall constitute a district, shall be composed of contiguous counties; and no county for representative purposes shall ever be divided (p. 167). Amended on second reading as follows:

Sec. 3. Senatorial and representative districts, when more than one county shall constitute a district, shall be composed of contiguous counties; and no county for senator or representative purposes shall ever be divided (pp. 377-78). On further consideration, committed to the Legislative Committee, with an amendment which the convention refused to lay on the table by a vote of 53-60, as follows:

Sec. 3. Senatorial and representative districts, when more than one county shall constitute a district, shall be composed of contiguous counties; and counties entitled to more than one representative may, under the provisions of a general law, be divided into representative districts (p. 387).

The original section was reported back by the Legislative Committee without amendment. The report was concurred in by a vote of 67-59, and engrossed for third reading by a vote of 69-58 (p. 475). Recommitted on third reading to the Legislative



Section 7. No person shall be a Senator or a Representative, who, at the time of his election, is not a citizen of the United States; nor any one who has not been, for two years next preceding his election, an inhabitant of this State, and, for one year next preceding his election, an inhabitant of the county or district whence he may be chosen. Senators shall be at least twenty-five, and Representatives at least twenty-one years of age.<sup>87</sup>

Section 8. Senators and Representatives, in all cases except treason, felony, and breach of the peace, shall be privileged from arrest, during the session of the General Assembly, and in going to and returning from the same; and shall not be subject to any civil process, during the session of the General Assembly, nor during

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Committee without instructions (p. 487). Reported by the Legislative Committee on December 27, as follows; passed without vote, and was referred to the Committee on Revision (p. 542).

Sec. 3. Senatorial and representative districts (where more than one county shall constitute a district) shall be composed of contiguous counties (p. 542). On November 2, the Committee on Elective Franchise reported the following section:

Sec. 2. The General Assembly shall, every six years after the adoption of this Constitution, make an equitable distribution of senators and representatives among the several counties and districts (p. 188). Laid on the table on second reading (p. 593).

Amendments proposed and rejected: (1) requiring representative and senatorial districts to be single, bounded by county, precinct, town or ward lines, consisting of contiguous compact territory and never consisting of parts of different counties; (2) each county, even though having but two-thirds of the ratio of representation, entitled to one representative, rejected by a vote of 55-56; (3) transfer of residuum due in large counties to adjoining small counties for representative purposes; (4) authorizing the General Assembly to provide by general law for the election of representatives by single districts in counties entitled to more than one representative; (5) any county having two-thirds of a senatorial ratio shall be entitled to a senator; (6) any county having three-fourths of a representative ratio shall be entitled to one representative, rejected by a vote of 62-65.

87. Reported by Committee on Legislative Department on October 31 as follows:

Sec. 5. No person shall be a senator or representative who, at the time of his election, is not a citizen of the United States, and been an inhabitant of this State, for the two years next preceding his election, and the last year thereof of the county or district for which he may be chosen. Senators shall be at least twenty-five and representatives twenty-one years of age (p. 167). A minority of the committee dissented to that part of the section requiring a senator or representative to be a native born or naturalized citizen of the United States and reported the following section:

Sec. 4. No person shall be a senator or representative who is not a white male inhabitant of this State and resident therein, two years immediately preceding his election, and the last year thereof, in the county or district, for which he may be chosen. Senators shall be at least twenty-five, and representatives twenty-one years of age, and shall have paid a State and county tax (p. 171). Engrossed for third reading without amendment (p. 390). Passed on December 10 by a vote of 103-19 (p. 398).

Amendments proposed and rejected: (1) qualification of senator or representative that he be a qualified elector, eliminating the provision that he must be a citizen of the United States, rejected by vote of 48-74. (2) age qualifications of senators thirty years, and representatives twenty-five years; (3) age qualifications of senators twenty-one years; (4) rendering eligible to seats in the General Assembly white males of foreign birth, residents of the State for two years, who have declared their intention to become citizens.



the fifteen days next before the commencement thereof. For any speech or debate in either House, a member shall not be questioned in any other place.<sup>88</sup>

Section 9. The sessions of the General Assembly shall be held biennially at the capital of the State, commencing on the Thursday next after the first Monday of January, in the year one thousand eight hundred and fifty-three, and on the same day of every second year thereafter, unless a different day or place shall have been appointed by law. But if, in the opinion of the Governor, the public welfare shall require it, he may at any time by proclamation, call a special session.<sup>89</sup>

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88. Reported by Committee on the Legislative Department on October 31, as follows:

Sec. 15. Senators and representatives, in all cases except treason, felony, or breach of the peace, shall be privileged from arrest during the session of the General Assembly, and in going to and returning from the same; and shall not be subject to any civil process during the session of the General Assembly, or for fifteen days next before the commencement thereof (p. 168). Engrossed for third reading as follows:

Sec. 15. Senators and representatives, in all cases except treason, felony, or breach of the peace, shall be privileged from arrest during the session of the General Assembly, and in going to and returning from the same; and shall not be subject to any civil process during the session of the General Assembly, or for fifteen days next before the commencement thereof, and for any speech or debate in either House, they shall not be questioned in any other place (p. 412). Passed on December 13 by a vote of 105-20 (p. 432).

Amendments proposed and rejected: (1) to eliminate the provision exempting members of the General Assembly from civil process during the session and fifteen days before; (2) to exempt members from civil process during the session and in going to and returning therefrom, only.

89. Reported by Committee on Legislative Department on October 31, as follows:

Sec. 7. The sessions of the General Assembly shall be held biennially at the capital of the State, commencing on the first Monday after the first day of January, in the year of our Lord one thousand eight hundred and fifty-three, and on the same day of every second year thereafter, unless a different day or place be appointed by law. But if, in the opinion of the governor, the public welfare shall at any time require it, he may by proclamation call a special session (p. 167). Engrossed for third reading as follows:

Sec. 7. The sessions of the General Assembly shall be held biennially at the capital of the State, commencing on the Thursday after the first Monday of January, in the year of our Lord one thousand eight hundred and fifty-three, and on the same day of every second year thereafter, unless a different day or place be appointed by law. But if, in the opinion of the governor, the public welfare shall at any time require it, he may by proclamation call a special session (p. 399). Passed on December 11 by a vote of 120-5 (p. 410). Reported by the Committee on Revision on February 5, and approved by consent (pp. 908-20). On November 1, the Committee on Executive Department reported the following section:

Sec. 9. He may convene the General Assembly on extraordinary occasions (p. 178). Engrossed without amendment (p. 538). Passed on December 27 by a vote of 98-9 (p. 547). Reported by the Committee on Revision on February 6, but was not incorporated in the Constitution as finally adopted (p. 929).

Amendments proposed and rejected: (1) to specifically designate Indianapolis as the meeting place of the legislature and to forbid the designation of any other place; (2) fixing the date of meeting of the General Assembly on the first Monday in January, beginning with 1852; (3) fixing the date of meeting of the General Assembly on the first Monday in December; special sessions to be convened at a time and place designated

Section 10. Each House, when assembled, shall choose its own officers, the President of the Senate excepted; judge the elections, qualifications and returns of its own members; determine its rules of proceeding, and sit upon its own adjournment. But neither House shall, without the consent of the other, adjourn for more than three days nor to any place other than that in which it may be sitting.<sup>90</sup>

Section 11. Two-thirds of each House shall constitute a quorum to do business; but a smaller number may meet, adjourn from day to day, and compel the attendance of absent members. A quorum being in attendance, if either House fail to effect an organization within the first five days thereafter, the members of the House so failing, shall be entitled to no compensation, from the end of the said five days until an organization shall have been effected.<sup>91</sup>

Section 12. Each House shall keep a journal of its proceedings, and publish the same. The yeas and nays on any question, shall, at the request of any two members, be entered together with the names of the members demanding the same, on the

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by the governor: (4) requiring the governor to specify in his proclamation calling a special session, the object thereof and prohibiting action on any other matter, rejected by a vote of 60-65. (5) fixing the pay of members at \$1.50 per day after the first seven weeks, rejected by a vote of 38-86. (6) authorizing the General Assembly to meet annually until 1855 if the interest of the State required it; (7) prohibiting action at a special session on any matter not referred to in the governor's message, rejected by a vote of 53-75. (8) limiting special session to twenty days, rejected by a vote of 53-74.

90. Reported by Committee on Legislative Department on October 31, as follows:

Sec. 8. Each house when assembled shall choose their own officers, (the President of the Senate excepted), be the judges of the qualifications and returns of their own members, determine the rules of their proceedings and sit upon their own adjournment. But neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting (p. 167). Engrossed for third reading without amendment (p. 405). Passed on December 11 by a vote of 123-2 (p. 410).

91. Reported by Committee on Legislative Department on October 31, as follows:

Sec. 9. Two-thirds of each house shall constitute a quorum to do business, but a smaller number may meet and adjourn from day to day, and compel the attendance of absent members. Two-thirds being in attendance, if no organization shall be effected in the first five days thereafter, the members of the house so failing shall be entitled to no compensation for services from the end of said five days until an organization is effected (p. 168). Engrossed for third reading without amendment (p. 406). Passed on December 11 by a vote of 123-2 (p. 410).

Amendments proposed and rejected: (1) allowing two days to effect an organization before compensation ceases; (2) allowing three days to effect an organization, rejected by vote of 62-66; (3) if an organization is not effected within five days "a plurality of the votes of the members present shall elect any officer of either House"; (4) to insert "a majority" where "two-thirds" occurs; (5) to strike out the second sentence.

journal; Provided, that on motion to adjourn, it shall require one-tenth of the members present to order the yeas and nays.<sup>92</sup>

Section 13. The doors of each House, and of Committees of the Whole, shall be kept open, except in such cases, as, in the opinion of either House, may require secrecy.<sup>93</sup>

Section 14. Either House may punish its members for disorderly behaviour, and may, with the concurrence of two-thirds, expel a member; but not a second time for the same cause.<sup>94</sup>

Section 15. Either House during its session, may punish, by imprisonment, any person not a member, who shall have been guilty of disrespect to the House, by disorderly or contemptuous behaviour in its presence; but such imprisonment shall not at any one time exceed twenty-four hours.<sup>95</sup>

92. Reported by Committee on Legislative Department on October 31, as follows:

Sec. 10. Each house shall keep a journal of its own proceedings and publish the same, and the yeas and nays of the members on any question shall, on the request of — of them, be entered on the journal (p. 168). Engrossed for third reading as follows:

Sec. 10. Each house shall keep a journal of its own proceedings and publish the same, and the yeas and nays of the members on any question shall, on the request of two of them, be entered on the journal, and the names of the members demanding the same shall also be entered upon the journal: Provided, That on a motion to adjourn, it shall require one-tenth of the members present to demand the yeas and nays to be recorded in the journal (pp. 406-11). Passed on December 13 by a vote of 105-20 (p. 432).

Amendments proposed and rejected: (1) number of members to secure an entry of the yeas and nays: fifteen; ten; five in the house and two in the senate; one-fifth of the body; one-tenth of the whole number.

93. Reported by Committee on the Legislative Department on October 31, as follows:

Sec. 16. The doors of each house and of committees of the whole shall be kept open, except in such cases as, in the opinion of the house, may require secrecy (p. 168). Engrossed for third reading as follows:

Sec. 16. The doors of each house and of committees of the whole shall be kept open except in such cases as, in the opinion of either house, may require secrecy (p. 412). Passed on December 13 by a vote of 105-20 (p. 432).

Amendment proposed and rejected: (1) to require the doors of each house and of the committee of the whole to be kept open on all occasions, rejected by a vote of 56-67.

94. Reported by Committee on Legislative Department on October 31, as follows:

Sec. 12. Either house may punish its members for disorderly behaviour and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause; and shall have all other powers necessary for a branch of the legislature of a free and independent State (p. 168). Engrossed for third reading without amendment (p. 411). Passed on December 13 by a vote of 105-20 (p. 432). Reported by the Committee on Revision on February 5, divided into two sections constituting sections 14 and 16 of article 4 of the Constitution as adopted and approved by consent (pp. 908, 920).

95. Reported by Committee on Legislative Department on October 31, as follows:

Sec. 13. Either house may punish by imprisonment during their session, any person not a member, who shall be guilty of any disrespect to the house by any disorderly or contemptuous behaviour in their presence; but such imprisonment shall not, at any one time exceed twenty-four hours (p. 168). Engrossed for third reading without amendment (p. 411). Passed on December 13 by a vote of 105-20 (p. 432).



Section 16. Each House shall have all powers, necessary for a branch of the Legislative department of a free and independent State.<sup>96</sup>

Section 17. Bills may originate in either House, but may be amended or rejected in the other; except that bills for raising revenue shall originate in the House of Representatives.<sup>97</sup>

Section 18. Every bill shall be read, by sections, on three several days, in each House; unless in case of an emergency, two-thirds of the House where such bill may be depending, shall, by a vote of yeas and nays, deem it expedient to dispense with this rule; but the reading of a bill by sections, on its final passage, shall, in no case, be dispensed with; and the vote on the passage of every bill or joint resolution shall be taken by yeas and nays.<sup>98</sup>

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96. See Note 94, p. 316.

97. Reported by Committee on the Legislative Department on October 31, as follows:

Sec. 17. Bills may originate in either house, but may be altered, amended, or rejected in the other; except that bills for raising revenue shall originate in the House of Representatives (p. 168). Engrossed for third reading as follows:

Bills may originate in either house, but may be altered, amended, or rejected in the other, except that bills for raising revenue shall originate in the House of Representatives. Every law shall embrace but one subject, which shall be expressed in the title: Provided, That if any subject should be embraced in a law which is not expressed in the title, such law shall only be void as to so much thereof as is not expressed in the title (p. 414). On third reading, recommitted to the Legislative Committee without instructions (p. 430). Subsequently the vote recommitting this section to the Legislative Committee was reconsidered and the section was advanced to engrossment by a vote of 78-31 (p. 901). Passed on February 5 by a vote of 93-34 (p. 916). Reported by the Committee on Revision on February 7, divided into two sections, constituting Sections 17 and 19 of Article 4 of the Constitution as adopted and concurred in (p. 936).

Amendments proposed and rejected: (1) by adding to the section that "every law shall embrace but one subject, and matters reasonably connected therewith, which shall be expressed in the title; but no law shall be rendered void by reason of any defect in the title," rejected by a vote of 57-66; (2) to strike out the proviso of the engrossed section; (3) if the title and law cannot both stand, the title shall not defeat the law; (4) no private or local bill which may be passed by the legislature shall embrace more than one subject, and that shall be expressed in the title.

98. Reported by Committee on the Legislative Department on October 31, as follows:

Sec. 18. Every bill shall be read on three different days in each house, unless, in case of emergency, two-thirds of the house, when such bill may be depending, by a vote of yeas and nays, shall deem it expedient to dispense with this rule; and the vote on the final passage of every bill shall be taken by yeas and nays, and be entered on the journal. Every bill having passed both houses, shall be signed by the President and Speaker of their respective houses (p. 168). Engrossed for third reading as follows:

Every bill or joint resolution shall be read through by sections on three different days in each house, unless in case of emergency, two-thirds of the house, when such bill or joint resolution may be depending by a vote of yeas and nays, shall deem it expedient to dispense with this rule; but the reading of a bill or joint resolution throughout by sections on its final passage, shall in no case be dispensed with; and the vote on the final passage of every bill or joint resolution shall be taken by yeas and nays, and be entered on the journal. Every bill or joint resolution having passed both houses, shall be signed by the President and Speaker of their respective houses, and a majority of all the mem-

Section 19. Every act shall embrace but one subject and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.<sup>99</sup>

Section 20. Every act and joint resolution shall be plainly worded, avoiding as far as practicable, the use of technical terms.<sup>1</sup>

Section 21. No act shall ever be revised or amended by mere reference to its title; but the act revised, or section amended, shall be set forth and published at full length.<sup>2</sup>

Section 22. The General Assembly shall not pass local or special laws, in any of the following enumerated cases, that is to say:

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bers elected to each house shall be necessary to pass every bill or joint resolution (p. 416). Passed on December 13 by a vote of 105-20 (p. 432). Reported by the Committee on Revision on February 5, divided into two sections constituting Sections 18 and 25 of Article 4 of the Constitution as adopted (p. 912).

Amendments proposed and rejected: (1) and before the second reading of any bill, upon demand of one-third of the members of the house, the same shall be printed and a copy thereof laid upon the desk of each member; (2) every bill shall be read at least once in each house, and free discussion allowed thereon; any bill shall be printed for information, whenever required by one-third of the members of either house; but the vote on the final passage shall not be taken until the third day after the introduction of any bill. None of the foregoing rules shall be suspended, unless, in case of emergency, two-thirds of either house shall deem such suspension necessary; and all votes upon such suspension shall be taken by ayes and noes, and recorded. The vote on the final passage of every bill shall be taken by yeas and nays, which shall be entered on the journal; and it shall require the votes of a majority of all the members elect of either house to pass any bill. Every bill having passed both houses, shall be signed by the President of the Senate, and the Speaker of the House; (3) every law and joint resolution shall be plainly worded in the English language, and shall not refer to any other law or joint resolution in explanation or extension of its provisions; (4) to eliminate the provision in the engrossed section which required a majority of the members to pass a bill or joint resolution, rejected by a vote of 39-91.

99. See Note 97, p. 317.

1. Proposed as an additional section by Mr. Morrison of Marion on December 13. The proviso was proposed by Mr. Pepper of Crawford.

Sec. 32. Every bill and joint resolution shall be plainly worded, avoiding as far as may be practicable the use of technical terms in the Latin or any other than the English language: Provided, That the legislature may publish laws in the German and French languages for the benefit of those who cannot read English (pp. 433-34).

The original section was adopted by a vote of 109-21; the proviso by a vote of 98-25. Subsequently the convention refused to indefinitely postpone this section by a vote of 26-48, and to reconsider the vote on indefinite postponement by a vote of 35-88. It was then ordered engrossed for third reading by a vote of 104-20 (pp. 435-37). Passed on December 17, by a vote of 97-21. An attempt to strike out the proviso failed. A motion to lay the section on the table was rejected by a vote of 23-87 (pp. 454-56).

2. Reported by Committee on the Legislative Department on October 31, as follows:

Sec. 29. No act of the General Assembly shall ever be revised or amended by reference to its title; but in such case the act revised or section amended, shall be re-enacted and published at full length (p. 170). Engrossed for third reading without amendment (p. 507). Passed on December 23 without vote (p. 514).

Regulating the jurisdiction and duties of Justices of the Peace and of Constables;

For the punishment of crimes and misdemeanors;

Regulating the practice in courts of justice;

Providing for changing the venue in civil and criminal cases;

Granting divorces;

Changing the names of persons;

For laying out, opening and working on highways, and for the election or appointment of supervisors;

Vacating roads, town plats, streets, alleys and public squares;

Summoning and empanneling grand and petit juries, and providing for their compensation;

Regulating county and township business;

Regulating the election of county and township officers and their compensation;

For the assessment and collection of taxes for State, county, township or road purposes;

Providing for supporting common schools, and for the preservation of school funds;

In relation to fees or salaries;

In relation to interest on money;

Providing for opening and conducting elections of State, county, or township officers, and designating the places of voting;

Providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities, by executors, administrators, guardians, or trustees.

Section 23. In all the cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.<sup>3</sup>

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3. The following section was reported by the Committee on County and Township Organization on October 27.

Sec. 3. The General Assembly shall provide by law for a uniform mode of doing county and township business (p. 151). Engrossed without amendment (p. 314). Passed on December 3 by a vote of 115-0 (p. 342). The following section was reported by the Committee on the Legislative Department on October 31.

Sec. 28. The General Assembly shall have no power to grant divorces or direct by special legislation, the sale of estates belonging to infants or other persons laboring under legal disabilities, but by general law, shall confer such favor on the courts of justice (p. 169). Engrossed without amendment (p. 506). Passed on December 23 without vote (p. 514). The following section was reported by the Committee on Local and Special Legislation on November 8:

Section ——. The General Assembly shall not pass any local or special laws in any of the following enumerated cases: that is to say; regulating the jurisdiction and duties of justices of the peace and constables; for the punishment of crimes and misdemeanors; regulating the practice at law and in Chancery; providing for granting divorces and changing the venue in civil and criminal cases; changing the names of per-



Section 24. Provision may be made, by general law, for bringing suit against the State, as to all liabilities originating after the adoption of this Constitution; but no special act authorizing such

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sons; for laying out, opening, working on and repairing highways, and the election or appointment of supervisors; vacating roads, town-plats, streets, alleys, and public squares; summoning and empannelling grand and petit jurors, and providing for their payment; regulating county and township business; regulating the election of county and township officers, and their compensation; for the assessment and collection of taxes for state, county, township, or road purposes; providing for maintaining common schools and the preservation of school funds; in relation to fees or salaries; providing for opening and conducting elections for state, county, or township officers, and where electors may vote; providing for the sale of real estate by executors, administrators, or guardians; for the creation of private incorporations; for the incorporation of colleges, seminaries, schools, churches, religious, scientific, or benevolent societies; providing for the incorporation of railroad, plank road, turnpike road, canal and bridge companies; in relation to municipal corporations, such as congressional townships, school districts, cities, boroughs, towns, and villages; and all laws in all such cases shall be general and of uniform operation throughout the State.

Engrossed as follows:

Section ——. The General Assembly shall not pass any local or special laws in any of the following enumerated cases: that is to say; regulating the jurisdiction and duties of justices of the peace and constables; for the punishment of crimes and misdemeanors; regulating the practice at law and in chancery; providing for granting divorces and changing the venue in civil and criminal cases; changing the names of persons; for laying out, opening, working on and repairing highways, and the election or appointment of supervisors; vacating roads, town-plats, streets, alleys, and public squares; summoning and empannelling grand and petit jurors, and providing for their payment; regulating county and township business; regulating the election of county and township officers, and their compensation; for the assessment and collection of taxes for State, county, township, or road purposes; providing for maintaining common schools and the preservation of school funds; in relation to fees or salaries; in relation to interest on money; providing for opening and conducting elections for state, county, or township officers, and where electors may vote; providing for the sale of real estate by executors, administrators, or guardians; for the creation of private incorporations; for the incorporation of colleges, seminaries, schools, churches, religious, scientific, or benevolent societies; providing for the incorporation of railroad, plank road, turnpike road, canal and bridge companies; in relation to municipal corporations, such as congressional townships, school districts, cities, boroughs, towns, and villages. And all laws in all such cases shall be general and of uniform operation throughout the State; and in all other cases where a general law can be made applicable, no local or special law shall ever be passed; and every statute shall be a public law unless otherwise declared in the statute (pp. 744-46).

Passed on January 24 by a vote of 116-13 (p. 767).

The last paragraph of this section, "And every statute shall be a public law unless otherwise declared in the statute", is given by the Committee on Revision as being attached to the section which constitutes Section 24 of Article 4 of the Constitution and which appears as Section 27 of Article 4 of the Constitution. According to the action of the Convention, as indicated on p. 745 of the Journal, this provision was attached to the section constituting Section 22 of Article 4 of the Constitution.

Reported by the Committee on Revision so consolidated and distributed as to constitute Sections 22, 23 and 27 of Article 4 of the Constitution as adopted (p. 927).

Amendments proposed and rejected: (1) "or try impeachments preferred against any county or township officer, or direct by special legislation the sale of estates belonging to infants or other persons laboring under legal disabilities, but shall by general law confer such power on the courts of justice;" (2) forbidding the legislature to pass any local or special laws; (3) to confer on boards doing county business authority to enact special laws on the exempted subjects; Rejected by a vote of 35-96. (4) exempting township business; (5) to prohibit the creation of both public and private corporations by special act; (6) authorizing the General Assembly to fix the route and termini of all roads by special acts. Rejected by a vote of 30-95.

suit to be brought, or making compensation to any person claiming damages against the State shall ever be passed.<sup>4</sup>

Section 25. A majority of all the members elected to each House, shall be necessary to pass every bill or joint resolution; and all bills and joint resolutions so passed, shall be signed by the Presiding Officers of the respective Houses.<sup>5</sup>

Section 26. Any member of either House shall have the right to protest, and to have his protest with his reasons for dissent, entered on the journal.<sup>6</sup>

Section 27. Every statute shall be a public law, unless otherwise declared in the statute itself.<sup>7</sup>

Section 28. No act shall take effect, until the same shall have been published and circulated in the several counties of the State by authority, except in case of emergency; which emergency shall be declared in the preamble or in the body of the law.<sup>8</sup>

4. Reported by Committee on the Legislative Department on October 31, as follows:

Sec. 30. No special act, authorizing suit to be brought against the State, shall ever be passed (p. 170). Engrossed as follows:

Sec. 30. No special act, authorizing suit to be brought against the State, shall ever be passed, but general laws may be passed for that purpose as to liabilities originating after the adoption of this Constitution and no special act making compensation to any person or persons claiming damages against the State shall ever be passed (p. 515). Passed on December 24 by a vote of 91-16 (p. 521). Reported by the Committee on Revision as follows on February 6: (See Note 3, p. 319.)

Sec. 30. No special act, authorizing suit to be brought against the State, shall ever be passed, but general laws may be passed for that purpose as to liabilities originating after the adoption of this Constitution, and no special act making compensation to any person or persons claiming damages against the State shall ever be passed.

And every statute shall be a public law unless otherwise declared in the statute (p. 928).

Amendments proposed and rejected: (1) Suits may be brought in all cases against the State in the manner prescribed by law; but no special act authorizing any suit or suits against the State shall ever be passed; Rejected by a vote of 47-64. (2) prohibiting the payment of compensation to any person claiming damages under any contract entered into with the State, by special act made after the adoption of the Constitution.

5. See Note 98, p. 317.

6. Reported by Committee on Legislative Department on October 31, as follows:

Sec. 11. Any member of either house shall have the right of protest, and of having his protest, with the reason of his dissent, entered on the journal (p. 168). Engrossed for third reading without amendment (p. 411). Passed on December 13, by a vote of 105-20 (p. 432).

7. See Note 3, p. 319.

8. Reported by Committee on the Legislative Department on October 31, as follows:

Sec. 24. No law of the General Assembly, of a public nature, shall take effect until the same shall be published in print and circulated in the several counties of the State, by authority, except in cases of emergency (p. 169). Engrossed for third reading as follows:

Sec. 24. No law of the General Assembly, shall take effect until the same shall be published and circulated in the several counties of the State, by authority, except in cases of emergency, which emergency shall be declared in the preamble or body of the law (p. 469). Passed on December 19 without vote (p. 485).

Section 29. The members of the General Assembly shall receive for their services, a compensation to be fixed by law; but no increase of compensation shall take effect during the session at which such increase may be made. No session of the General Assembly, except the first under this Constitution, shall extend beyond the term of sixty-one days, nor any special session beyond the term of forty days.<sup>9</sup>

Section 30. No Senator or Representative shall, during the term for which he may have been elected, be eligible to any office, the election to which is vested in the General Assembly; nor shall

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9. Reported by Committee on the Legislative Department on October 31, as follows:

Sec. 26. The members of the General Assembly shall receive for their services a compensation to be fixed by law, and paid out of the public treasury; but no increase of compensation shall take effect during the session at which such increase may be made (p. 169). Amended on second reading to read as follows:

Sec. 26. The members of the General Assembly shall receive for their services a compensation to be fixed by law, and paid out of the public treasury; but no increase of compensation shall take effect during the session at which such increase may be made. Such compensation shall not exceed three dollars per day, for a period of sixty days from the commencement of the session, and shall not exceed the sum of one dollar and fifty cents per day for the remainder of the session. This provision shall not apply to the first legislature which is to convene after the adoption of this Constitution (p. 492). As thus amended, the Convention refused to advance the section to engrossment. A subsequent attempt to secure a reconsideration of the vote on engrossment carried by a vote of 84-60 (p. 503). Engrossed for third reading without amendment by a vote of 68-48 (p. 506). Recommitted to the Legislative Committee by a vote of 66-45 with instructions to strike out the entire section and insert the following:

Sec. 26. The members of the General Assembly shall receive for their services a compensation to be fixed by law; but no increase of compensation shall take effect during the session at which such increase may be made.

No regular session of the General Assembly, except it be the first under this Constitution, shall extend [to] beyond the term of sixty days; nor any called session beyond the term of forty days (p. 512). Reported back to the Convention as follows; passed by a vote of 82-29.

Sec. 26. The members of the General Assembly shall receive for their services a compensation to be fixed by law; but no increase of compensation shall take effect during the session at which such increase may be made.

No regular session of the General Assembly, except it be the first under this Constitution, shall extend beyond the term of sixty days; nor any called session beyond the term of forty days (p. 619).

Amendments proposed and rejected: (1) Provided, That after the first fifty days from the commencement of the session, the compensation for their services shall not exceed the sum of one dollar and fifty cents per day for the remainder of the session. This provision shall not apply to the first legislature which is to convene after the adoption of this Constitution. "BUNCOMBE" rejected by a vote of 48-67. The same amendment, fixing a period of 56 days and authorizing the legislature to extend the time after 1870, rejected by a vote of 61-64; (2) three dollars per day for sixty days and one dollar and fifty cents for the remainder of the session, except the first session; The same amendment fixing the time at 42 days; providing that this restriction of compensation should not apply to sessions at which a general revision of the laws was undertaken; (3) fixing the compensation of members of the General Assembly at three dollars per day, during their personal attendance, not to exceed eight weeks, except the first session, nor more than four weeks at a called session, and three dollars for each twenty-five miles traveled; Rejected by a vote of 50-67. (4) to fix the pay of members at two dollars per day; (5) to limit the compensation after the first eight weeks to one dollar and fifty cents per day.



he be appointed to any civil office of profit, which shall have been created or the emoluments of which shall have been increased, during such term; but this latter provision shall not be construed to apply to any office elective by the People.<sup>10</sup>

## ARTICLE 5.

### EXECUTIVE.

Section 1. The executive power of the State shall be vested in a Governor. He shall hold his office during four years, and shall not be eligible more than four years, in any period of eight years.

Section 2. There shall be a Lieutenant Governor, who shall hold his office during four years.<sup>11</sup>

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10. Reported by Committee on the Legislative Department on October 31, as follows:

Sec. 22. No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office of profit under the State, which shall have been created, or the emoluments of which shall have been increased during such term, except such office as may be filled by elections of the people (p. 169). Engrossed for third reading without amendment (p. 465). Passed on December 19 by a vote of 109-8 (p. 483). On December 18 Mr. Borden proposed the following additional section which was adopted and engrossed without amendment.

Sec. 38. No member of either branch of the General Assembly during the time for which he was elected, shall be eligible to any office, the appointment of which is vested in the General Assembly (p. 469). When considered on third reading the following was proposed as a supplemental provision:

Nor shall any person who shall be the keeper or exhibitor of any gaming table, such as A. B. C. or E. O. table, roulette, shuffleboard, faro-bank, or any other gaming table, or who shall permit his house, boarding room, or his booth, shed, or tenement to be used for gaming, or the manufacture of bogus money, be eligible to the General Assembly during the time he keeps such gaming table, or permits his house, booth, etc., to be used as aforesaid. Rejected by a vote of 51-65 (p. 484). Passed on December 19, without vote (p. 485).

The following substitute was proposed and rejected by a vote of 41-75 (p. 485).

No member of either branch of the General Assembly shall be eligible to any other office under this State during the term for which he may have been elected. Reported by the Committee on Revision on February 6, the two sections being consolidated to constitute Section 30 of Article 4 of the Constitution as adopted (p. 926).

Amendments proposed and rejected: (1) prohibiting senators and representatives from being appointed or elected to any civil office of profit under the State, during the time for which they were elected, or to the United States senate; rejected by a vote of 50-66; (2) rendering senators and representatives ineligible to any other office during the time for which they were elected.

Sections 1, 2, 3, 7, 8, 10, 11, 12, 13, 15 and 26 were reported by the Committee on Revision on February 5 and approved by consent; Sections 4, 5, 20, 21, 28 and 29 on February 6 and Section 6 on February 10 (pp. 908, 920, 926, 928, 984).

11. Reported by Committee on Executive Department on November 1, as follows:

Section 1 The executive power shall be vested in a Governor, who shall hold his office for — years. A Lieutenant Governor shall be elected and hold his office for the same term of time (p. 177). Advanced to third reading as follows:

Section 1. The executive power shall be vested in a Governor, who shall hold his

Section 3. The Governor and Lieutenant Governor shall be elected at the times and places of choosing members of the General Assembly.<sup>12</sup>

Section 4. In voting for Governor and Lieutenant Governor, the electors shall designate, for whom they vote as Governor, and for whom as Lieutenant Governor. The returns of every election for Governor and Lieutenant Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the House of Representatives, who shall open and publish them in the presence of both Houses of the General Assembly.<sup>13</sup>

Section 5. The persons, respectively, having the highest number of votes for Governor and Lieutenant Governor, shall be elected; but in case two or more persons shall have an equal and the highest number of votes for either office, the General Assembly

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office for four years, but shall not be eligible more than four in any term of eight years. A Lieutenant Governor shall be elected and hold his office for the same term of time (p. 536). Passed on December 27 by a vote of 63-44 (p. 546). An attempt to amend on third reading by fixing the governor's term of office at two years and rendering him ineligible for more than four years in any term of six was rejected by a vote of 52-55.

Reported by the Committee on Revision on February 6, divided into two sections, to constitute Sections 1 and 2 of Article 5 of the Constitution as adopted (p. 928).

The question being on fixing the term of Governor at two or four years it was fixed at four, by a vote of 52-41. The amendment providing that the Governor shall not be eligible more than four years in any term of eight was adopted by a vote of 69-35.

12 Reported by Committee on Executive Department on November 1 as follows:

Sec. 4. The Governor and Lieutenant Governor shall be elected at the time and places of choosing members of the General Assembly. The persons respectively having the highest number of votes for Governor and Lieutenant Governor shall be elected, but in case two or more shall have an equal and the highest number of votes for Governor or for Lieutenant Governor, the General Assembly shall, forthwith, by joint ballot, choose one of the said persons so having an equal and the highest number of votes as Governor or as Lieutenant Governor (p. 178). Engrossed for third reading as follows:

Sec. 4. The Governor and Lieutenant Governor shall be elected at the time and places of choosing members of the General Assembly. The persons respectively having the highest number of votes for Governor and Lieutenant Governor shall be elected, but in case two or more shall have an equal and the highest number of votes for Governor or for Lieutenant Governor, the General Assembly shall forthwith by a joint viva voce vote, choose one of the said persons so having an equal and the highest number of votes as Governor or as Lieutenant Governor (p. 538). Passed on December 27, by a vote of 98-9 (p. 547). Reported by the Committee on Revision on February 6, divided into two sections, constituting Sections 3 and 5 of Article 5 of the Constitution as adopted (p. 929).

13. Reported by Committee on Executive Department on November 1, as follows:

Sec. 5. In voting for Governor and Lieutenant Governor the electors shall distinguish whom they vote for as Governor and whom as Lieutenant Governor. The returns of every election for Governor and Lieutenant Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the House of Representatives who shall open and publish them in the presence of both houses of the General Assembly (p. 178). Engrossed for third reading without amendment (p. 538). Passed on December 27, by a vote of 98-9 (p. 547).

shall, by joint vote, forthwith proceed to elect one of the said persons Governor or Lieutenant Governor, as the case may be.<sup>14</sup>

Section 6. Contested elections for Governor or Lieutenant Governor, shall be determined by the General Assembly, in such manner as may be prescribed by law.<sup>15</sup>

Section 7. No person shall be eligible to office of Governor or Lieutenant Governor, who shall not have been five years a citizen of the United States, and also a resident of the State of Indiana during the five years next preceding his election; nor shall any person be eligible to either of the said offices, who shall not have attained the age of thirty years.<sup>16</sup>

Section 8. No member of Congress, or person holding any office under the United States or under this State, shall fill the office of Governor or Lieutenant Governor.<sup>17</sup>

Section 9. The official term of the Governor and Lieutenant Governor shall commence on the second Monday of January, in the year one thousand eight hundred and fifty-three; and on the same day every fourth year thereafter.<sup>18</sup>

Section 10. In case of the removal of the Governor from office, or of his death, resignation, or inability to discharge the duties of the office, the same shall devolve on the Lieutenant Governor; and the General Assembly shall, by law, provide for the case of

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14. See Note 12, p. 324.

15. Proposed as an additional section by Mr. Smiley on December 27.

Sec. 28. Contested elections for Governor and Lieutenant Governor shall be determined by both houses of the General Assembly, according to such regulations as may be prescribed by law (p. 550). Adopted and engrossed for third reading without amendment (p. 550). Passed on December 30 without vote (p. 563).

16. Reported by Committee on Executive Department on November 1, as follows:

Sec. 2. No person shall be eligible to the office of Governor, or Lieutenant Governor, who has not been five years a citizen of the United States, and a resident of the State of Indiana five years next preceding his election, nor shall any person be eligible to either of said offices, who has not attained the age of thirty years (p. 177). Engrossed for third reading without amendment (p. 537). Passed on December 27 by a vote of 98-9 (p. 546).

Amendments proposed and rejected: (1) merely requiring that a person to be eligible to the office of governor shall be a citizen of the United States and an elector in the State; (2) prescribing the eligibility age as twenty-one years.

17. Reported by Committee on Executive Department on November 1, as follows:

Sec. 14. No member of Congress, or person holding any office under the United States, or this State, shall exercise the office of Governor or Lieutenant Governor (p. 179). Engrossed for third reading without amendment (p. 538). Passed on December 27 by a vote of 98-9 (p. 547).

18. Proposed as an additional section by Mr. Morrison of Marion on February 7, and passed, under suspension of the rules, without vote.

Section 1. The official term of Governor and Lieutenant Governor, shall commence on the Monday next succeeding the first Thursday in January, in the year one thousand eight hundred and fifty-three, and on the same day, every fourth year thereafter (p. 952).



removal from office, death, resignation, or inability, both of the Governor and Lieutenant Governor, declaring what officer shall then act as Governor; and such officer shall act accordingly, until the disability be removed or a Governor be elected.

Section 11. Whenever the Lieutenant Governor shall act as Governor, or shall be unable to attend as President of the Senate, the Senate shall elect one of its own members as President for the occasion.<sup>19</sup>

19. The following section was reported by the Committee on the Executive Department on November 1:

Sec. 17. In case of impeachment of the Governor, his removal from office, death, refusal to qualify, resignation, or absence from the State, the Lieutenant Governor shall exercise all the powers and authority appertaining to the office of Governor, until another be duly qualified, or the Governor absent or impeached, shall return or be acquitted (p. 179). Engrossed as follows:

Sec. 17. In case of impeachment of the Governor his removal from office, death, refusal to qualify, resignation, absence from the State, or other disability, the Lieutenant Governor shall exercise all the powers and authority appertaining to the office of Governor, during the residue of the term or until the Governor absent, disqualified or impeached, shall return or be restored or acquitted (p. 539). Passed on December 27 by a vote of 98-9 (p. 547). The following section was reported by the Committee on Executive Department on November 1:

Sec. 18. Whenever the government shall be administered by the Lieutenant Governor, or he shall be unable to attend as President of the Senate, the Senate shall elect one of their own numbers as president for that occasion. And if, during the vacancy of the office of Governor, the Lieutenant Governor shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the State, the president of the Senate pro tem, shall, in like manner, administer the government, until he shall be superceded by a Governor or Lieutenant Governor. The Lieutenant Governor while he acts as President of the senate shall receive for his services the same compensation which shall, for the same period, be allowed to the Speaker of the House of Representatives, and no more: And during the time he administers the government as Governor, shall receive the same compensation which the Governor would have received and been entitled to, had he been employed in the duties of his office, and no more (p. 179). Engrossed as follows:

Sec. 18. Whenever the government shall be administered by the Lieutenant Governor, or he shall be unable to attend as President of the Senate, the Senate shall elect one of their own numbers as president for that occasion. And if, during the vacancy of the office of Governor, the Lieutenant Governor shall be impeached, removed from office, refuse to qualify, resign, die or otherwise disabled, or be absent from the State, the President of the Senate for the time being, shall, in like manner, administer the government, until he shall be superceded by a Governor or Lieutenant Governor. The Lieutenant Governor while he acts as President of the Senate shall receive for his services the same compensation which shall, for the same period, be allowed to the Speaker of the House of Representatives, and no more: And during the time he administers the government, as Governor, shall receive the same compensation which the Governor would have received and been entitled to, had he been employed in the duties of his office, and no more (p. 539).

Amended on third reading, by unanimous consent, as follows and passed by a vote of 98-9:

Sec. 18. Whenever the government shall be administered by the Lieutenant Governor, or he shall be unable to attend as President of the Senate, the Senate shall elect one of their own numbers as president for that occasion. And if, during the vacancy of the office of Governor, the Lieutenant Governor shall be impeached, removed from office, refuse to qualify, resign, die or otherwise disabled, or be absent from the State, the temporary President of the Senate shall in like manner, administer the government, until he shall be superceded by a Governor or Lieutenant Governor. The Lieutenant Governor while he acts as President of the Senate, shall receive for his ser-

Section 12. The Governor shall be commander-in-chief of the military and naval forces, and may call out such forces, to execute the laws, or to suppress insurrection or to repel invasion.<sup>20</sup>

Section 13. He shall from time to time, give to the General

vices the same compensation which shall, for the same period, be allowed to the Speaker of the House of Representatives, and no more: And during the time he administers the government, as Governor, shall receive the same compensation which the Governor would have received and been entitled to, had he been employed in the duties of his office, and no more (p. 546).

The following section was reported by the Committee on Executive Department on November 1:

Sec. 19. The President pro tempore of the Senate, during the time he administers the government, shall receive, in like manner, the same compensation which the Governor would have received had he been employed in the duties of his office, and no more (p. 179). Engrossed for third reading as follows:

Sec. 19. The President for the time being of the Senate, during the time he administers the government, shall receive, in like manner, the same compensation which the Governor would have received, had he been employed in the duties of his office, and no more (p. 540). Amended on third reading by unanimous consent as follows and passed by a vote of 98-9:

Sec. 19. The temporary President of the Senate, during the time he administers the government, shall receive, in like manner, the same compensation which the Governor would have received, had he been employed in the duties of his office, and no more (p. 546). The following section was reported by the Committee on the Executive Department on November 1.

Sec. 20. If the Lieutenant Governor shall be called upon to administer the government, and shall, while in such administration, resign, die, or be absent from the State, during the recess of the General Assembly, it shall be the duty of the Secretary of State, for the time being, to convene the Senate for the purpose of choosing a president pro tempore (p. 179). Amended on second reading as follows:

Sec. 20. If the Lieutenant Governor shall be called upon to administer the government, and shall, while in such administration, resign, die, or be absent from the State, or be otherwise disabled, during the recess of the General Assembly, it shall be the duty of the Secretary of State, to convene the Senate for the purpose of choosing a president for the time being (p. 540). Amended on third reading, by unanimous consent, as follows, and passed by a vote of 98-9 (p. 546).

Sec. 20. If the Lieutenant Governor shall be called upon to administer the government, and shall, while in such administration, resign, die, or be absent from the State, or be otherwise disabled, during the recess of the General Assembly, it shall be the duty of the Secretary of State, to convene the Senate for the purpose of choosing a temporary president (p. 546). Reported by the Committee on Revision on February 6, consolidated and distributed so as to constitute Sections 10, 11 and 23 of Article 5 of the Constitution as adopted (p. 930).

20. Reported by Committee on Executive Department on November 1 as follows:

Sec. 6. The Governor shall be commander-in-chief of the military and naval forces, and may call out such forces to execute the laws, to suppress insurrections, and to repel invasions (p. 178). Engrossed for third reading without amendment (p. 538). Passed on December 27 by a vote of 98-9 (p. 547).

Amendment proposed and rejected: (1) to amend to read as follows: The Governor shall be commander-in-chief of the army and navy of this State, and of the militia thereof, except when they shall be called into the service of the United States; but he shall not command personally in the field, unless he shall be advised so to do by a resolution of the General Assembly.

Assembly information touching the condition of the State, and recommend such measures as he shall judge to be expedient.<sup>21</sup>

Section 14. Every bill which shall have passed the General Assembly, shall be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it, with his objections, to the House in which it shall have originated; which House shall enter the objections, at large, upon its journals, and proceed to reconsider the bill. If, after such reconsideration, a majority of all the members elected to that House shall agree to pass the bill, it shall be sent, with the Governor's objections, to the other House, by which it shall likewise be reconsidered; and, if approved by a majority of all the members elected to that House, it shall be a law. If any bill shall not be returned by the Governor within three days, Sundays excepted, after it shall have been presented to him, it shall be a law, without his signature, unless the general adjournment shall prevent its return; in which case it shall be a law, unless the Governor, within five days next after such adjournment, shall file such bill, with his objections thereto, in the office of Secretary of State; who shall lay the same before the General Assembly at its next session, in like manner as if it had been returned by the Governor. But no bill shall be presented to the governor, within two days next previous to the final adjournment of the General Assembly.<sup>22</sup>

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21. Reported by Committee on Executive Department on November 1, as follows:

Sec. 10. He shall give to the General Assembly, and at the close of his official term, to the next General Assembly, information by message of the condition of the State, and recommend such measures to them as he shall deem expedient (p. 178). Engrossed for third reading without amendment (p. 538). Passed on December 27 by a vote of 98-9 (p. 547).

22. On October 31, the Committee on the Legislative Department reported the following sections:

Sec. 19. Every bill which shall have passed both houses of the General Assembly shall, before its becoming a law, be presented to the Governor. If he approve, he shall sign it; but if not, he shall return it, with his objections, to the house in which it shall have originated, which shall enter his objections at large upon the journal and proceed to reconsider it. If after such reconsideration, it again pass both houses, by yeas and nays, by a majority of two-thirds of each house present, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned by the Governor within five days (Sundays excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it, unless the General Assembly, by adjournment, prevent such return, in which case it shall be a law, unless sent back within three days after their next meeting (p. 168).

Sec. 20. Every resolution to which the concurrence of both houses may be necessary, shall be presented to the Governor, and before it shall take effect, be approved by him; or being disapproved, shall be repassed according to the rules and limitations prescribed in case of bills (p. 168).

A minority of the Committee, dissenting on the ground that a mere majority of the members of the two houses should be sufficient to pass a bill over the Governor's veto, reported the following section:

Section 1. Every bill which shall have passed both houses of the General Assem-



bly shall be presented to the Governor; if he approve he shall sign it; but if not he shall return it with his objections to the house in which it shall have originated, who shall enter the objections at large upon the journals, and proceed to reconsider it. If after such reconsideration a majority of all the members elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by a majority of all the members elected to that house, it shall be a law; but in such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill, shall be entered upon the journals of each house respectively. If any bill shall not be returned by the Governor within five days (Sundays excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it, unless the general adjournment prevents its return; in which case it shall be a law, unless sent back within three days after their next meeting (p. 170). On second reading these two sections were laid on the table (p. 433). On November 1, the Committee on the Executive Department reported the following sections:

Sec. 22. Every bill which shall have passed both houses of the General Assembly, shall be presented to the Governor; if he approve, he shall sign it; but if not he shall return it with his objections, to the house in which it shall have originated, who shall enter the objections at large upon their journals; and proceed to reconsider it. If, after such reconsideration, a majority of all the members elected to that house, shall agree to pass the bill, it shall be sent, with the objections to the other house, by which it shall likewise be reconsidered, and, if approved by a majority of all the members elected to that house, it shall be a law; but, in such cases, the vote of both houses shall be determined by yeas and nays, and the names of persons voting for or against the bill, shall be entered on the journals of each house respectively. If any bill shall not be returned by the Governor within five days (Sundays excepted) after it shall have been presented to him, the same shall be a law, unless the general adjournment prevents its return; in which case it shall be a law (p. 180).

Sec. 23. Every resolution to which the concurrence of both houses may be necessary, shall be presented to the Governor, and before it shall take effect, be approved by him; or, being disapproved, shall be repassed by a majority of all the members elected to both houses, according to the rules and limitations prescribed in case of a bill. (p. 180). Both sections were advanced to engrossment without amendment (p. 550). Reported Section 22 failed of passage on December 28 by a vote of 55-55 (p. 558). By unanimous consent, reported Section 23 was amended on third reading as follows:

Sec. 23. Every joint resolution shall be presented to the Governor, and before it shall take effect, be approved by him; or being disapproved shall be repassed by a majority of all the members elected to both houses, according to the rules and limitations prescribed in case of a bill (p. 559). After amendment, the section was referred to the committee with instructions to incorporate the section reported by the minority of the Legislative Committee on October 31 (p. 559).

Reported back to the Convention as follows:

Sec. 23. Every joint resolution shall be presented to the Governor, and before it shall take effect, be approved by him; or, being disapproved, shall be re-passed by a majority of all the members elected to both houses. And every bill which shall have passed both houses of the General Assembly, shall be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it shall have originated, who shall enter the objections at large upon their journals, and proceed to reconsider it. If, after such reconsideration, a majority of all the members elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by a majority of all the members elected to that house, it shall be a law; but in such case the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill, shall be entered on the journals of each house respectively. If any bill shall not be returned by the Governor within five days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the general adjournment prevents its return; in which case it shall be a law unless sent back within three days after their next meeting (p. 610). Recommitted to the committee with instructions to amend as follows:

Sec. 23. Every bill which shall have passed both houses of the General Assembly, shall be presented to the Governor. If he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it shall have originated, who

Section 15. The Governor shall transact all necessary business with the officers of government, and may require information in writing from the officers of the administrative department, upon any subject relating to the duties of their respective offices.

Section 16. He shall take care that the laws be faithfully executed.<sup>23</sup>

Section 17. He shall have the power to grant reprieves, commutations, and pardons, after conviction, for all offences except treason and cases of impeachment, subject to such regulations as may be provided by law. Upon conviction for treason, he shall

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shall enter the objections at large upon their journals, and proceed to reconsider it. If, after such reconsideration a majority of all the members elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by a majority of all the members elected to that house, it shall become a law; but in such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill, shall be entered upon the journals of each house respectively. If any bill shall not be returned by the Governor within three days (Sundays excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it, unless the general adjournment prevents its return, in which case it shall be a law, unless the Governor, within five days after such adjournment, shall file the same, with his objections thereto, in the office of the Secretary of State, who shall lay the same before the General Assembly, at its next session, for its action, in the same manner as if it had been returned by the Governor within two days previous to the adjournment of the General Assembly. Every joint resolution, requiring the signature of the Governor, shall be presented to him, and before it shall take effect, be approved by him, or being disapproved, shall be re-passed by a majority of all the members elected to both houses according to the rules and regulations prescribed in case of a bill (p. 611). Reported back to the Convention on January 23 and passed without vote (p. 750).

Amendments proposed and rejected: (1) to allow the Governor seven instead of five days to consider a bill; (2) Sec. 22. to require a three-fifths vote to pass a bill over the Governor's veto; (3) providing that if a bill is returned by the Governor "within time before the general adjournment for each branch of the legislature to act upon the same, it shall be a law notwithstanding;" Rejected by a vote of 28-71; (4) to include joint resolutions in the same class with bills; (5) depriving the Governor of the right of veto, rejected by a vote of 12-99; (6) to adopt the corresponding section of the old Constitution; (7) allowing the Governor three instead of five days to return a bill, but limiting the power of the Governor to return a bill with his objections to matters involving the constitutionality of the bill; (8) And if the bill shall not be returned by the Governor during the session of the General Assembly before its adjournment, if he approve of the same, he shall sign it and file it in the office of the Secretary of State within thirty days after such adjournment and the same shall be a law. Rejected by a vote of 48-61; (9) if the Governor fail to return a bill with his reasons against its passage, before the expiration of the session, it shall become a law notwithstanding. Rejected by a vote of 28-91; (10) no new bill shall be introduced in either house within three days of final adjournment; (11) prohibiting the introduction of bills within three days of the day of final adjournment.

23. Reported by Committee on Executive Department on November 1 as follows:

Sec. 7. He shall transact all necessary business with officers of government, and may require information in writing from the officers of the executive department, upon any subject relating to the duties of their respective offices (p. 178).

Sec. 8. He shall take care that the laws be faithfully executed (p. 178). En-grossed for third reading without amendment (p. 538). Passed on December 27 by a vote of 98-9 (p. 547).



have power to suspend the execution of the sentence, until the case shall be reported to the General Assembly, at its next meeting; when the General Assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law; and shall report to the General Assembly, at its next meeting, each case of reprieve, commutation, or pardon granted, and also the names of all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted: Provided, however, that the General Assembly may, by law, constitute a council, to be composed of officers of State, without whose advice and consent the Governor shall not have power to grant pardons, in any case, except such as may, by law, be left to his sole power.<sup>24</sup>

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24. Reported by Committee on Executive Department on November 1 as follows:

See. 13. He may grant reprieves, commutations and pardons after convictions, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to regulations provided by law, relative to the manner of applying for pardons. Upon conviction for treason, he may suspend the execution of the sentence, until the case shall be reported to the General Assembly at its next session, when the General Assembly shall either pardon, or commute the sentence, or grant a further reprieve. He shall communicate to the General Assembly at each session, information of each case of reprieve, commutation, or pardon granted, and the reasons therefor. He shall also have power to remit fines and forfeitures, and shall report to the General Assembly at its next session, the names of persons in whose favor such remittances are made, and the amount so remitted (p. 178). On second reading, amended to read as follows:

See. 13. He may grant reprieves, commutations and pardons after convictions, for all offences except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to regulations provided by law, relative to the manner of applying for pardons. Upon conviction for treason, he may suspend the execution of the sentence, until the case shall be reported to the General Assembly at its next session, when the General Assembly shall either pardon, or commute the sentence, or grant a further reprieve. He may communicate to the General Assembly at each session, information of each case of reprieve, commutation, or pardon granted, and the reasons therefor. He shall also have power to remit fines and forfeitures under such rules and regulations as may be prescribed by law and shall report to the General Assembly at its next session, the names of persons in whose favor such remittances are made, and the amount so remitted (p. 538). It was then referred to a select committee of five, with a pending amendment to add in the proper place, "by and with the consent of a majority of the judges of the supreme court" (p. 538). On January 16 the select committee reported the section back to the Convention in the following form:

Sec. 14. The Governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offences except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason he shall have power to suspend the execution of the sentence until the case shall be reported to the General Assembly at its next meeting, when the General Assembly shall either grant a pardon, commute the sentence, direct the execution of the same, or grant a further reprieve. He shall have power to remit fines and forfeitures under such rules and regulations as may be prescribed by



Section 18. When, during a recess of the General Assembly, a vacancy shall happen in any office, the appointment to which is vested in the General Assembly; or when, at any time, a vacancy shall have occurred in any other State office, or in the office of Judge of any court; the Governor shall fill such vacancy, by appointment, which shall expire, when a successor shall have been elected and qualified.<sup>25</sup>

Section 19. He shall issue writs of election to fill such vacancies as may have occurred in the General Assembly.<sup>26</sup>

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law, and shall report to the General Assembly at its next meeting each case of reprieve, commutation, or pardon granted, and also the names of all persons in whose favor remittances of fines and forfeitures have been made, and the several amounts so remitted: Provided, however, That the General Assembly may by law constitute a council for the Governor to be composed of officers of State, without whose advice and consent he shall not have power to grant pardons in any cases, except such as may by law be left to the exclusive power of the Governor (p. 694). Ordered engrossed for third reading. Passed on January 17 without vote (p. 701).

Amendments proposed and rejected: (1) to eliminate the provision authorizing the Governor to remit fines and forfeitures and report to the General Assembly the names of the persons in whose favor the remittances are made and the amount remitted; (2) to amend the section as reported back by the select committee so as to authorize the Governor to grant remittances; but in no case to authorize pardons or remittances unless recommended by the court imposing them; (3) to substitute the following: He shall have power to remit fines and forfeitures, grant reprieves and pardons, except in cases of impeachments, under such restrictions and regulations as shall be prescribed by law.

25. Reported by Committee on Executive Department, November 1, as follows:

Sec. 21. Vacancies that may happen in offices, the appointment of which is vested in the Governor, or in the General Assembly, shall be filled by the Governor during the recess of the General Assembly, by granting commissions that shall expire at the end of the next session (p. 179). On second reading, recommitted to Committee on Executive Department without instructions (p. 541). Reported back to the Convention by the Committee on the Executive Department as follows:

Sec. 21. Vacancies that may happen in offices, the appointment of which is vested in the Governor, or in the General Assembly shall be filled by the Governor during the recess of the General Assembly, by granting commissions that shall expire when their successors are elected and qualified. And all offices which may be created by the General Assembly shall be filled in such manner as may be prescribed by law (p. 551). Concurred in by the Convention and advanced to third reading (p. 551). Passed on December 28, without vote (p. 556). The following section was proposed by Mr. Morrison of Marion on January 30, adopted and advanced to engrossment.

Sec. 6. The Governor shall fill by appointment such vacancies as may occur in the offices of Judges, Auditor, Treasurer, Secretary of State, Senators of the United States, and in all offices not otherwise provided for in this Constitution, and the officers so appointed shall hold their respective offices until their successors shall be severally elected and qualified (p. 850). Passed without vote on January 31 (p. 859). Reported by the Committee on Revision on February 7, consolidated to constitute Section 18 of Article 5 of the Constitution as adopted (p. 935).

26. Reported by Committee on the Legislative Department on October 31, as follows:

Sec. 14. When vacancies happen in either branch of the General Assembly the Governor shall issue writs of election to fill such vacancies (p. 168). Engrossed for third reading without amendment (p. 412). Passed on December 13 by a vote of 105-20 (p. 432). The following section was reported by the Committee on Executive Department on November 1:

Sec. 12. He shall issue writs of election to fill such vacancies as occur in the Sen-

Section 20. Should the seat of government become dangerous from disease or a common enemy, he may convene the General Assembly at any other place.<sup>27</sup>

Section 21. The Lieutenant Governor shall, by virtue of his office, be President of the Senate; have a right, when in committee of the whole, to join in debate, and to vote on all subjects; and, whenever the Senate shall be equally divided, he shall give the casting vote.<sup>28</sup>

Section 22. The Governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished, during the term for which he shall have been elected.<sup>29</sup>

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ate and House of Representatives (p. 178). Engrossed without amendment (p. 538). Passed on December 27 by a vote of 98-9 (p. 547). Section 14 was reported by the Committee on Revision on February 5, and Section 12 on February 6. Section 19 of Article 5 of the Constitution as finally adopted represents the consolidation of these two sections.

Amendment proposed and rejected: (1) When vacancies happen in either branch of the General Assembly, by death or otherwise, or when any board of canvassers, at its meeting after an election for any one or more members of the General Assembly that may be elected in any one county, or for any county office, shall certify that there is no election for any one or more of such offices, by reason of a tie, or from any other cause, the Governor shall issue writs of election to fill such vacancies; and the General Assembly shall provide by law for empowering boards of canvassers to hear and determine all contested elections for members of the General Assembly, and for all county officers, and for making such boards the judges of the law, the evidence, and the facts at such hearings, and shall also provide a mode by which persons feeling themselves aggrieved by the decisions of any such board, may take an appeal to the circuit court and for empowering such court or any such board, where justice cannot otherwise be done, to refer contested elections back to the people.

27. Reported by Committee on Executive Department on November 1, as follows:

Sec. 11. He may convene the General Assembly at another place, should the seat of government become dangerous from disease or a common enemy (p. 178). Engrossed for third reading without amendment (p. 538). Passed on December 27, by a vote of 98-9 (p. 547).

28. Reported by Committee on Executive Department on November 1, as follows:

Sec. 16. The Lieutenant Governor shall, by virtue of his office, be President of the Senate, have a right when in committee of the whole, to debate and vote on all subjects, and when the Senate are equally divided to give the casting vote (p. 179). Engrossed for third reading without amendment (p. 539). Passed on December 27, by a vote of 98-9 (p. 547).

Amendments proposed and rejected: (1) to prohibit the Lieutenant Governor from voting on all subjects when in committee of the whole; (2) by adding the following to the section: Except in the case of resolutions or motions to go into the election of any office or officers; and if upon any such resolution or motion the Senate is equally divided, they shall go into such election or elections in the same manner as they would be required to do if a majority had voted in favor of the same.

29. Reported by Committee on Executive Department on November 1, as follows:

Sec. 15. The Governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he shall have been elected (p. 179). Engrossed for third reading without amendment (p. 539). Passed on December 27 by a vote of 98-9 (p. 547).

Amendment proposed and rejected: (1) fixing the salary of the Governor at not less than \$1,500 nor more than \$2,500 per year.

Section 23. The Lieutenant Governor, while he shall act as President of the Senate, shall receive, for his services, the same compensation as the Speaker of the House of Representatives; and any person, acting as Governor, shall receive the compensation attached to the office of Governor.<sup>30</sup>

Section 24. Neither the Governor nor Lieutenant Governor shall be eligible to any other office, during the term for which he shall have been elected.<sup>31</sup>

## ARTICLE 6.

### ADMINISTRATIVE.

Section 1. There shall be elected, by the voters of the State, a Secretary, and Auditor and a Treasurer of State, who shall, severally, hold their offices for two years. They shall perform such duties as may be enjoined by law; and no person shall be eligible to either of said offices, more than four years in any period of six years.<sup>32</sup>

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30. See Note 19, p. 326.

31. Reported by Committee on Executive Department on November 1, as follows:

Sec. 3. The Governor shall be ineligible to any other office during the time for which he was elected (p. 178). Engrossed for third reading as follows:

Sec. 3. The Governor and Lieutenant Governor shall be ineligible to any other office during the time for which he was elected (p. 537). Passed on December 27, by a vote of 98-9 (p. 547).

Amendment proposed and rejected: (1) requiring the Governor to take an oath not to accept any other office or appointment, State or Federal, for the time for which he was elected.

Sections 4, 7, 8, 12, 13, 16, 20, 21, 22 and 24 were reported by the Committee on Revision on February 6; Section 14 on February 7; Section 9 on February 8; and Section 6 on February 10 (pp. 929-30, 935, 979, 984).

32. Reported by Committee on State Officers on October 25 as follows:

Section 1. A Secretary of State shall be chosen by the qualified electors, and be commissioned by the Governor for two years, until a new Secretary be elected and qualified: Provided, That no person shall be eligible to the office of Secretary of State more than four years in any term of six years. He shall keep a fair register and attest all the official acts and proceedings of the Governor; and shall, when required, lay the same and all papers, minutes, and vouchers relative thereto before either house of the General Assembly, and shall perform such other duties as may be enjoined upon him by law.

Sec. 2. There shall be chosen by the qualified electors, and commissioned by the Governor, a Treasurer and Auditor, whose powers and duties shall be prescribed by law, and who shall hold their office for two years, and until their successors be elected and qualified: Provided, That no person shall be eligible to the office of Treasurer or Auditor more than four years in any term of six years (p. 129). Amended on second reading to read as follows:

Section 1. A Secretary of State shall be chosen by the qualified electors, and be commissioned by the Governor for two years, until a new Secretary be elected and qualified: Provided, That no person shall be eligible to the office of Secretary of State more than four years in any term of six years. He shall perform such duties as may be enjoined upon him by law (p. 176).

Sec. 2. There shall be chosen by the qualified electors, and commissioned by the



Section 2. There shall be elected, in each county by the voters thereof, at the time of holding general elections, a Clerk of the Circuit Court, Auditor, Recorder, Treasurer, Sheriff, Coroner, and Surveyor. The Clerk, Auditor and Recorder, shall continue in office four years; and no person shall be eligible to the office of Clerk, Recorder, or Auditor, more than eight years in any period of twelve years. The Treasurer, Sheriff, Coroner, and Surveyor, shall continue in office two years; and no person shall be eligible to the office of Treasurer or Sheriff, more than four years in any period of six years.<sup>33</sup>

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Governor, a Treasurer and Auditor of State whose powers and duties shall be prescribed by law, and who shall hold their office for two years, and until their successors be elected and qualified: Provided, That no person shall be eligible to the office of Treasurer or Auditor more than four years in any term of six years (pp. 176, 199).

At this juncture, an amendment was proposed and adopted which was designed to simplify and consolidate the two sections and as thus amended it was ordered engrossed for third reading:

Section 1. There shall be elected by the qualified voters of this State a Secretary, Auditor, and Treasurer of State, who shall hold their several offices for two years, and until their successors shall be elected and qualified. They shall severally perform such duties as shall be enjoined upon them by law, and no person shall be eligible to either of said offices more than four years in any period of six years (p. 199). Passed on November 13 by a vote of 90-7 (p. 247).

Amendments proposed and rejected: (1) to fix the term of Secretary of State at four years instead of two, adopted on October 31 by a vote of 76-56, but on a reconsideration on November 5, rejected; (2) to strike out the whole proviso relative to eligibility, rejected by a vote of 56-63; (3) to limit the re-eligibility of the Secretary of State to eight years in any term of twelve; (4) extending the eligibility of Auditor and Treasurer to four years in any term of eight; (5) fixing the term of Auditor and Treasurer at four years rejected by a vote of 42-92; (6) restricting the eligibility of Treasurer to two years in four and the Auditor to four years in six, rejected by a vote of 51-79; (7) fixing the term of Auditor at four years and Treasurer at two years, both without eligibility provision; (8) fixing the term of Treasurer at one year, Secretary at two years, and Auditor at four years, each to be re-eligible for a second term and no longer; (9) fixing the term of Auditor at four years, and Treasurer at two years, each eligible to re-election for one term and no more; (10) fixing the term of Auditor, Treasurer and Secretary at two years, to be ineligible more than six years in any eight.

33. The following sections were reported by the Committee on County and Township Organization on October 29:

Section 1. There shall be elected in each county, by the qualified electors thereof, a sheriff, coroner, recorder, county auditor, county treasurer, and a clerk of the circuit court, at the time and place of holding elections for members of the General Assembly. The clerk, auditor and recorder shall each continue in office four years and until their successors shall be chosen and qualified. But no person shall be eligible to the office of clerk, recorder or auditor more than eight years in any term of twelve years. The sheriff, coroner and treasurer shall each continue in office two years, and until their successors shall be chosen and qualified: Provided, That no person shall be eligible to the office of sheriff or treasurer more than four years in any term of six years.

Sec. 2. When the office of clerk of the circuit court of any county shall be vacant, the circuit court of such county or the judge thereof, shall appoint a clerk pro tem who shall hold his office till the next general election, and until his successor shall be chosen and qualified.

Sec. 3. No person shall be eligible to the office of clerk of the circuit court, unless he shall first have obtained from one or more of the judges of the Supreme Court, or from one or more of the judges of the circuit courts, a certificate that he is qualified to

Section 3. Such other county and township officers as may be necessary, shall be elected, or appointed, in such manner as may be prescribed by law.<sup>34</sup>

Section 4. No person shall be elected, or appointed, as a county officer, who shall not be an elector of the county; nor any one who shall not have been an inhabitant thereof, during one year next preceding his appointment, if the county shall have been so long organized; but if the county shall not have been so long organized, then within the limits of the county or counties out of which the same shall have been taken.<sup>35</sup>

execute the duties of the office of clerk of the circuit court (p. 149). Reported Section 1 was engrossed as follows:

Section 1. There shall be elected in each county, by the qualified electors thereof, a sheriff, coroner, recorder, county auditor, county treasurer, county surveyor, and a clerk of the circuit court, at the time and place of holding general elections. The clerk, auditor and recorder shall each continue in office four years, and until their successors shall be chosen and qualified. But no person shall be eligible to the office of clerk, recorder or auditor more than eight years in any term of twelve years. The sheriff, coroner, surveyor and treasurer shall each continue in office two years, and until their successors shall be chosen and qualified: Provided, That no person shall be eligible to the office of sheriff or treasurer more than four years in any term of six years (pp. 307, 311). Passed on December 3 by a vote of 104-15 (p. 338). Reported Sec. 2 was indefinitely postponed, and reported Sec. 3 laid on the table on second reading (p. 312).

On November 7, the Committee on Organization of Courts of Justice submitted the following section:

Sec. 10. There shall be a clerk of the circuit court elected by the electors in each county, who shall hold his office six years, if he shall so long behave well, and who shall perform such duties as may be prescribed by law (p. 208). Laid on the table on second reading (p. 709).

Amendments proposed and rejected: To reported Section 1: (1) to strike out "county auditor", lost by vote of 29-91; (2) to strike out "clerk of the circuit court"; (3) to secure to present incumbents the right to serve out their terms, rejected by a vote of 46-75; (4) providing for the election of two associate judges for terms of four years; (5) providing for the election of assessors for terms of two years; (6) election of all county officers for four years, no person to be eligible more than two out of three terms, rejected by vote of 34-82; (7) fixing the term of auditor at two years, eligible four years in any term of six. To reported Sec. 4: (1) election of three justices of the peace in each township, for three years, one to retire annually; (2) to fix the terms of justices at three years.

34. Reported by Committee on County and Township Organization on October 29, as follows:

Section 1. Such other county and township officers as may be necessary, shall be appointed in such manner as may be prescribed by law (p. 150). Engrossed for third reading as follows:

Section 1. Such other county and township officers as may be necessary, shall be elected or appointed in such manner as may be prescribed by law (p. 312). Passed on December 3 by a vote of 114-0 (p. 339).

35. Reported by Committee on County and Township Organization on October 29, as follows:

Section 1. No person shall be elected or appointed as a county officer within any county, who shall not have been a citizen and an inhabitant therein, one year next preceding his appointment, if the county shall have been so long erected; but if the county shall not have been so long erected, then within the limits of the county or counties out of which the same shall have been taken (p. 151). Engrossed for third reading as follows:

Section 1. No person shall be elected or appointed as a county officer within any

Section 5. The Governor, and the Secretary, Auditor, and Treasurer of State, shall, severally, reside and keep the public records, books, and papers, in any manner relating to their respective offices, at the seat of government.<sup>36</sup>

Section 6. All county, township, and town officers, shall reside within their respective counties, townships, and towns; and shall keep their respective offices at such places therein, and perform such duties, as may be directed by law.<sup>37</sup>

Section 7. All State officers shall, for crime, incapacity, or negligence, be liable to be removed from office, either by impeachment by the House of Representatives, to be tried by the Senate, or by a joint resolution of the General Assembly; two-thirds of the members elected to each branch voting, in either case, therefor.

Section 8. All State, county, township, and town officers, may be impeached, or removed from office, in such manner as may be prescribed by law.<sup>38</sup>

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county, who shall not have been an inhabitant, being a qualified elector therein, one year next preceding his appointment, if the county shall have been so long organized; but if the county shall not have been so long organized, then within the limits of the county or counties out of which the same shall have been taken (p. 313). By unanimous consent, amended on third reading as follows:

Section 1. No person shall be elected or appointed as a county officer within any county, who shall not have been an inhabitant therein, one year next preceding his appointment, and a qualified elector, if the county shall have been so long organized; but if the county shall not have been so long organized, then within the limits of the county or counties out of which the same shall have been taken (p. 342). Passed on December 3, by a vote of 115-0 (p. 342).

36. Reported by the Committee on Miscellaneous Provisions on January 21, as follows:

Sec. 3. The Governor, Secretary, Auditor, and Treasurer of State shall severally reside and keep the public records, books and papers, in any manner relating to their respective offices, at the seat of government (p. 733). Engrossed without amendment (p. 850). Passed without vote on January 21 (p. 859). Reported by the Committee on Revision on February 8 (p. 974).

37. Reported by Committee on County and Township Organization on October 29, as follows:

Sec. 4. All county, town and township officers shall reside within their respective towns, counties and townships, and shall keep their respective offices at such places therein, as may be directed by law (p. 150). Engrossed for third reading as follows:

Sec. 4. All county, town and township officers shall reside within their respective towns, counties and townships, and shall keep their respective offices at such places therein, and perform such duties as may be directed by law (p. 313). Passed on December 3 by a vote of 114-0 (p. 339). An unsuccessful attempt was made to amend this section on third reading to except the trustees of the town of Clarksville.

38. Reported by Committee on County and Township Organization on October 29, as follows:

Sec. 2. All county, town and township officers may be impeached or removed from office in such manner as shall be provided by law (p. 151). Engrossed for third reading without amendment (p. 313). A proposed amendment authorizing circuit courts to remove or impeach county or township officers was rejected. Passed on December 3, by a vote of 115-0 (p. 342).

On December 18, the Committee on Impeachments reported the following sections:

Sec. —. All county and township officers shall be liable to be removed from



Section 9. Vacancies in county, township, and town offices, shall be filled in such manner as may be prescribed by law.<sup>39</sup>

Section 10. The General Assembly may confer upon the boards doing county business in the several counties, powers of a local, administrative character.<sup>40</sup>

office on indictment and conviction for any felony or misfeasance in office, in the circuit court of the county wherein they hold their office.

See. —. All State officers shall be liable to removal from office by impeachment by the House of Representatives, to be tried by the Senate, for any crime or misdemeanor, and on conviction, shall be removed.

See. —. Any State officer may be removed from office by a joint resolution of the General Assembly, for incapacity or for general negligence of the duties of office; two-thirds of the members elect, of each branch, voting therefor.

Sec. —. The General Assembly shall pass laws regulating proceedings for the removal of officers from office, State, county and township, pursuant to the foregoing provisions (p. 462). Reported Section 1 was laid on the table on second reading (p. 825). Reported Sections 2, 4 and 5 were engrossed without amendment (p. 825). Reported Sections 2, 4 and 5 passed on January 30 (p. 835). Reported by Committee on Revision on February 7, so consolidated as to constitute Sections 7 and 8 of Article 6 of the Constitution as adopted and approved (pp. 937-38).

Amendments proposed and rejected: (1) and when the Senate shall sit as a court for the trial of impeachments, the senators shall be upon oath or affirmation to do justice according to law and evidence; and no person shall be convicted without the concurrence of a majority of all the senators elected; (2) to provide that State officers shall be removable for crimes but not misdemeanors; (3) when the Governor is tried, one of the judges of the Supreme Court shall preside.

39. Reported by Committee on County and Township Organization on October 29, as follows:

See. 2. Vacancies in office, in this article not herein provided for, shall be filled in such manner as may be prescribed by law (p. 150). Engrossed for third reading as follows:

See. 2. Vacancies in county and township offices shall be filled in such manner as may be prescribed by law (pp. 312-13). Passed on December 3 by a vote of 114-0 (p. 339).

40. Proposed as an additional section on the floor of the Convention on December 13.

Sec. 33. The legislature may confer upon the boards doing county business in the several counties in this State, such powers of a local legislative and administrative character, as they shall from time to time prescribe (p. 438). Referred to the Committee on Special and Local Legislation (p. 438). Reported back to the Convention with the recommendation that the section be laid on the table, and concurred in by the Convention. An effort was made to amend the section by providing that the powers conferred on county boards must be by general law. The report recommending indefinite postponement was then concurred in by a vote of 68-59 (pp. 596, 743). Subsequently the vote on concurrence was reconsidered by a vote of 74-53. By a vote of 56-67, the Convention refused to concur in the report. The Convention refused to advance the section to engrossment was reconsidered by a vote of 58-67 and the section was ordered engrossed for third reading by a vote of 69-57 (pp. 746-48). Recommitted on third reading by a vote of 86-43 to be amended to read as follows:

See. 33. The legislature may confer upon the boards doing county business in the several counties in this State, such powers of a local administrative character, as they shall from time to time prescribe (p. 763). Reported back to the Convention as follows on January 27, and passed without vote:

Sec. 33. The General Assembly may confer on the board doing county business, in the several counties of this State, such powers of a local administrative character as they shall, from time to time, prescribe by law (p. 796).

Sections 1, 2, 3, 6, 9 and 10 were reported by the Committee on Revision on February 7 and Section 5 on February 8 (pp. 936-37, 974).

## ARTICLE 7.

## JUDICIAL.

Section 1. The Judicial power of the State shall be vested in a Supreme Court, in Circuit Courts, and in such inferior Courts as the General Assembly may establish.<sup>41</sup>

Section 2. The Supreme Court shall consist of not less than three, nor more than five Judges; a majority of whom shall form a quorum. They shall hold their offices for six years, if they so long behave well.

Section 3. The State shall be divided into as many districts as there are Judges of the Supreme Court; and such districts shall be formed of contiguous territory, as nearly equal in population, as, without dividing a county, the same can be made. One of said Judges shall be elected from each district, and reside therein; but

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41. Reported by Committee on Organization of Courts of Justice on November 7, as follows:

Section 1. The judicial power of this State shall be vested in one Supreme Court, in circuit courts, and in such other inferior courts as the General Assembly may establish (p. 207). Engrossed for third reading without amendment (p. 704). Recommitted on third reading with instructions to amend as follows:

Section 1. The judicial power of this State shall be vested in a Supreme Court, circuit courts, county courts, justices of the peace, and such other inferior courts as the General Assembly may create and establish (p. 713). Reported back to the Convention amended according to instructions. After consideration, the section was recommitted with instructions to amend as follows:

Section 1. The judicial power of this State shall consist of a Supreme Court and circuit courts, and such other inferior courts as shall be established by law (p. 730). Reported back to the Convention on January 22, amended as follows; passed without vote.

Section 1. The judicial power of this State shall be vested in one Supreme Court, in circuit courts, and in such other inferior courts as the General Assembly may establish (p. 742).

An amendment providing that: (1) There shall be elected by the qualified electors of each county, a register, who shall keep an office for the probate of wills, granting letters of administration, and guardianship, who shall hold his office for three years, if he so long behave well, whose duties and compensation shall be prescribed by law, was rejected; (2) The legislature shall provide by law for the organization of a suitable number of circuit probate courts, to consist of a single judge, whose powers and duties shall be prescribed by law, and whose compensation shall be equal to that of the judges of the circuit courts; And all costs of administration for which decedents' estates might be liable, shall be paid out of the county treasury; (3) There shall be elected by the voters of the several counties in this State, at the time of holding general elections, a judge of Common Pleas and Probate for each county, who shall hold his office for the term of — years; he shall be the clerk of said court, but receive no other salary than the fees arising from the business of the office, which fees shall be regulated by law; and said court shall have exclusive probate jurisdiction, and such other civil jurisdiction as may be conferred upon it by the General Assembly.

said Judges shall be elected by the electors of the State at large.<sup>42</sup>

Section 4. The Supreme Court shall have jurisdiction, co-extensive with the limits of the State, in appeals and writs of error, under such regulations and restrictions as may be prescribed by law. It shall also have such original jurisdiction as the General Assembly may confer.<sup>43</sup>

Section 5. The Supreme Court shall, upon the decision of every case, give a statement in writing of each question arising in the record of such case, and the decision of the Court thereon.<sup>44</sup>

42. Reported by Committee on Organization of Courts of Justice on November 7, as follows:

Sec. 2. The Supreme Court shall consist of five judges, three of whom shall form a quorum, who shall hold their office six years, if they shall so long behave well. The State shall be divided into five Supreme Court districts, of contiguous territory, as nearly equal in population as may be; but no county shall be divided in the formation of said districts, and a judge shall reside in, and be elected by, the electors of each district (p. 207). A minority of the Committee on Organization of Courts of Justice submitted the following section:

Sec. ——. The Supreme Court shall consist of five Judges, three of whom shall form a quorum, who shall hold their office six years, if they shall so long behave well. The State shall be divided into five Supreme Court districts of contiguous territory as nearly equal in population as may be; but no county shall be divided in the formation of said districts, and a judge shall reside in each district; but they shall all be elected at the same time by the electors of the whole State (p. 208). Engrossed for third reading as follows by a vote of 67-40.

Sec. 2. The Supreme Court shall consist of not less than three nor more than five Judges, a majority of whom shall form a quorum, who shall hold their office six years, if they shall so long behave well. The State shall be divided into districts, of contiguous territory, as nearly equal in population as may be; but no county shall be divided in the formation of said districts, and a judge shall reside in, and be elected by, the electors of each district (p. 705). Recommended on third reading by a vote of 66-57, with instructions to amend to provide that judges shall be elected by the voters of the whole State (p. 713). Reported back to Convention amended according to the instructions on January 21 and passed by a vote of 81-49 (p. 728). Reported by the Committee on Revision on February 7, so distributed as to constitute Sections 2 and 3 of Article 7 of the Constitution as adopted (p. 938). An amendment that a judge should reside in each district but be elected by the electors of the entire State, was rejected by a vote of 47-75; (2) to provide for the election of judges by the people in a manner to be prescribed by law. Rejected by a vote of 49-84. (3) to strike out that part of the section requiring Supreme judges to live in certain districts.

43. Reported by Committee on Organization of Courts of Justice on November 7, as follows:

Sec. 3. The Supreme Court shall have jurisdiction in appeals from, and writs of error to, the circuit and other courts, in such manner as shall be prescribed by law and such original jurisdiction as the legislature may confer upon it (p. 207). Engrossed for third reading without amendment (p. 706). Passed without vote on January 18 (p. 714). An attempt to strike out the provision authorizing the legislature to confer original jurisdiction on the Supreme Court was lost.

44. Reported by Committee on Organization of Courts of Justice on November 7, as follows:

Sec. 5. There shall be a reporter of the decisions of the Supreme Court appointed by the same and removable at its will; but no judge shall be allowed to report the decisions of the Supreme Court (p. 207).

Sec. 6. The Supreme Court shall appoint its own sheriff, who shall perform such duties as may be required by law (p. 208). The Convention refused to advance reported Section 5 to engrossment (p. 707). Reported Section 6 was laid on the table on second reading with an amendment providing that the sheriff of the Supreme Court



Section 6. The General Assembly shall provide, by law, for the speedy publication of the decisions of the Supreme Court, made under this Constitution; but no judge shall be allowed to report such decisions.<sup>45</sup>

Section 7. There shall be elected by the voters of the State, a Clerk of the Supreme Court, who shall hold his office four years, and whose duties shall be prescribed by law.<sup>46</sup>

Section 8. The Circuit Courts shall each consist of one Judge and shall have such civil and criminal jurisdiction as may be prescribed by law.<sup>47</sup>

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should be elected by popular vote (p. 707). The following section was proposed by Mr. Gibson on January 27, adopted and ordered engrossed:

Sec. 11. It shall be the duty of the Supreme Court on the decision of every cause, to give a brief statement, in writing, of the questions arising therein, and their decision of each question respectively (p. 803). Passed without vote on January 28 (p. 818). A proposed amendment to provide for the election of the reporter of the Supreme Court by the qualified voters, was rejected by a vote of 56-66.

45. Submitted as an additional section on January 17 by Mr. Hovey, and adopted.

Sec. 13. No judge shall be allowed to report the decisions of the Supreme Court (p. 708). Amended by unanimous consent on third reading on January 18, as follows and passed without vote.

Sec. 13. The General Assembly shall provide by law for the speedy publication of the decisions of the Supreme Court, but no judge shall be allowed to report the decisions of said court (p. 715).

46. Reported by Committee on Organization of Courts of Justice on November 7, as follows:

Sec. 4. The Supreme Court shall appoint its own clerk who shall hold his office for six years, if he shall so long behave well; and whose duty shall be prescribed by law (p. 207). A minority of the Committee on Organization of Courts of Justice submitted the following section:

Sec. —. There shall be a clerk of the Supreme Court elected by the electors of the whole State, who shall hold his office six years, if he shall so long behave well, and whose duty shall be prescribed by law (p. 209). Engrossed for third reading as follows:

Sec. —. There shall be a clerk of the Supreme Court elected by the electors of the whole State, who shall hold his office four years if he shall so long behave well, and whose duty shall be prescribed by law (p. 706). Passed without vote on January 18 (p. 715).

47. Reported by Committee on Organization of Courts of Justice on November 7, as follows:

Sec. 8. The circuit court shall be composed of one judge only who shall hold at least three courts every year, in each county in his circuit, and shall have such civil and criminal jurisdiction as may be prescribed by law (p. 208). Laid on the table on second reading with the following pending amendment: The circuit court shall be composed of one judge only, who shall hold in every year at least two terms of circuit court, and at least three terms of probate court in each county of his circuit: Provided, The circuit and probate courts shall be held at separate terms, and shall in no case be joined together (p. 708). Taken from the table; the pending amendment was laid on the table by a vote of 78-48. Engrossed as follows:

Sec. 8. The circuit court shall consist of one judge only, and it shall have such civil and criminal jurisdiction as may be prescribed by law (p. 724). Passed without vote on January 21 (p. 739).

Proposed amendments: (1) authorizing the legislature, after 1860, to abolish probate courts and confer their jurisdiction on other courts; (2) The State shall be divided into a suitable number of circuits for the decision and determination of causes

Section 9. The State shall, from time to time, be divided into judicial circuits; and a judge for each circuit shall be elected by the voters thereof. He shall reside within the circuit, and shall hold his office for the term of six years, if he so long behave well.<sup>48</sup>

Section 10. The General Assembly may provide, by law, that the Judge of one circuit may hold the Courts of another circuit, in cases of necessity or convenience; and in case of temporary inability of any Judge, from sickness or other cause, to hold the Courts in his circuit, provision may be made, by law, for holding such courts.<sup>49</sup>

Section 11. There shall be elected, in each judicial circuit, by the voters thereof, a Prosecuting Attorney, who shall hold his office for two years.<sup>50</sup>

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relating to the probate of last wills and testaments, and the settlement of decedents' estates and causes relating thereto, and also into a suitable number of circuits for the decision of other causes, both civil and criminal, whose powers and duties shall be prescribed by law. Rejected by a vote of 36-86.

48. Reported by Committee on Organization of Courts of Justice on November 7, as follows:

Sec. 7. The State shall be divided into at least twenty circuits, and a circuit judge shall be elected by the electors in each circuit, and shall reside therein; and shall hold his office six years, if he shall so long behave well (p. 208). Laid on the table on second reading with pending amendments providing: (1) that the State shall be divided into a suitable number of judicial circuits, and one circuit judge shall be elected by the electors of each, and shall reside therein. He shall hold his office four years if he shall so long behave well; but he shall not be eligible to the office of circuit judge more than eight years in any term of twelve years; (2) that the State be divided into twenty-four circuits (p. 708). Subsequently the section was taken up; one of the pending amendments was withdrawn and the other rejected. Engrossed for third reading as follows:

Sec. 7. The State shall be divided into circuits, and a circuit judge shall be elected by the electors in each circuit, and shall reside therein; and shall hold his office six years, if he shall so long behave well, and no person elected to any judicial office in this State, shall, during the term for which he is elected, be eligible to any other office of trust or profit under the State (pp. 719-20). Passed on January 21 by a vote of 86-39 (p. 738).

Amendments proposed and rejected: (1) a proposal to elect judges for four instead of six years was rejected by a vote of 52-72; (2) providing that a judge shall not be eligible to any other office during the time for which he was elected, nor eligible to the same office more than six years in any term of twelve. Rejected by a vote of 27-96.

49. Reported by Committee on Organization of Courts of Justice on November 7, as follows:

Sec. 9. The legislature may provide by law that the judge of one circuit may hold the courts of another circuit, in cases of necessity or convenience (p. 208). Engrossed for third reading without amendment (p. 708). Passed without vote on January 18 (p. 715).

50. Reported by Committee on Organization of Courts of Justice on November 7, as follows:

Sec. 2. There shall be elected in each judicial circuit, by the electors thereof, a prosecuting attorney, who shall hold his office for two years, and until his successor is elected and qualified (p. 209). Engrossed without amendment (p. 723). Passed on January 21, without vote (p. 739).

Proposed amendments: (1) providing for the election of a prosecuting attorney for each county. Rejected by a vote of 23-93; (2) authorizing the legislature to prescribe districts wherein prosecuting attorneys shall be elected.

Section 12. Any Judge, or Prosecuting Attorney, who shall have been convicted of corruption or other high crime, may, on information in the name of the State, be removed from office by the Supreme Court, or in such other manner as may be prescribed by law.<sup>51</sup>

Section 13. The judges of the Supreme Court and Circuit Courts shall, at stated times, receive a compensation, which shall not be diminished during their continuance in office.<sup>52</sup>

Section 14. A competent number of Justices of the Peace shall be elected, by the voters in each township in the several counties. They shall continue in office four years, and their powers and duties shall be prescribed by law.<sup>53</sup>

Section 15. All judicial officers shall be conservators of the peace in their respective jurisdictions.<sup>54</sup>

Section 16. No person elected to any judicial office, shall, during the term for which he shall have been elected, be eligible to any office of trust or profit, under the State, other than a judicial office.<sup>55</sup>

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51. Reported by Committee on Impeachments on December 18, as follows:

Sec. —. Any judge being convicted on indictment of any felony or corruption in office, may be removed from office by the judgment of the Supreme Court, on information in the name of the State (p. 462). Advanced to engrossment as follows:

Sec. —. Any judge being convicted of any felony or corruption in office, may be removed from office by the judgment of the Supreme Court, on information in the name of the State (p. 825). Passed on January 30, without vote (p. 835).

52. Proposed as an additional section by Mr. Howe on February 3.

Sec. 3. The judges of the Supreme Court, the circuit court and other inferior courts shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office (p. 891). Engrossed without amendment. Passed without vote on February 4 (p. 899); given as Sec. 2.

53. Reported by Committee on Organization of Courts of Justice on November 7, as follows:

Sec. 11. There shall be a competent number of justices of the peace elected by the electors in each township in the several counties, and who shall continue in office five years, if they shall so long behave well, whose powers and duties shall be regulated and defined by law (p. 208). Laid on the table on second reading (p. 709). The following section was reported by the Committee on County and Township Organization on October 29.

Sec. 4. A competent number of justices of the peace shall be elected by the qualified electors in each township, and shall continue in office four years, if they shall so long behave well, whose powers and duties shall be prescribed by law (p. 150). Engrossed as follows:

Sec. 4. A competent number of justices of the peace shall be elected by the qualified electors in each township, and shall continue in office four years and until their successors are elected and qualified, if they shall so long behave well, whose powers and duties shall be prescribed by law (p. 312). Passed on December 3 by a vote of 114-1. This is given in the Journal as Sec. 2, but this is evidently incorrect (p. 338).

54. Reported by Committee on Organization of Courts of Justice on November 7, as follows:

Sec. 12. All judicial officers of this State shall be conservators of the peace in their respective jurisdictions (p. 208). Engrossed for third reading without amendment (p. 710). Passed without vote on January 18 (p. 715).

55. See Note 48, p. 342.



Section 17. The General Assembly may modify, or abolish, the Grand Jury system.<sup>56</sup>

Section 18. All criminal prosecutions shall be carried on, in the name, and by the authority of the State; and the style of all process shall be: "The State of Indiana."<sup>57</sup>

Section 19. Tribunals of conciliation may be established, with such powers and duties as shall be prescribed by law; or the powers and duties of the same may be conferred upon other Courts of Justice; but such tribunals or other Courts, when sitting as such, shall have no power to render judgment to be obligatory on the parties, unless they voluntarily submit their matters of difference, and agree to abide the judgment of such tribunal or Court.<sup>58</sup>

Section 20. The General Assembly, at its first session after the adoption of this Constitution, shall provide for the appointment of three Commissioners, whose duty it shall be to revise, simplify, and abridge, the rules, practice, pleadings, and forms, of the Courts of justice. And they shall provide for abolishing the distinct forms of action at law, now in use; and that justice shall be administered in a uniform mode of pleading, without distinction between law and equity. And the General Assembly may, also, make it the duty of said Commissioners to reduce into a systematic code, the general statute law of the State; and said Commissioners shall report the result of their labors to the General Assembly, with such recommendations and suggestions, as to abridgement

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56. See Notes 46, p. 341, and 57 following.

57. Reported by Committee on the Practice of Law and Law Reform on November 6, as follows:

Section 1. All prosecutions shall be carried on in the name of and by the authority of this State; and the style of all process shall be "The State of Indiana" (p. 202). Engrossed for third reading as follows:

Section 1. All criminal prosecutions shall be carried on in the name of, and by the authority of this State; and the style of all process shall be "The State of Indiana" (p. 702). Passed without vote on January 18 (p. 710).

58. Reported by Committee on the Practice of Law and Law Reform on December 28, as follows:

Sec. —. Tribunals of conciliation may be established with such powers and duties as shall be prescribed by law, or the powers and duties of such tribunals may be conferred upon any of the other courts of this State; but such tribunals and other courts, when sitting as such tribunals, shall have no power to render judgment to be obligatory on the parties, except they voluntarily submit their matters in difference, and agree to abide the judgment, or assent thereto, in the presence of such tribunals or court, in such cases as shall be prescribed by law (p. 553). Advanced to engrossment by a vote of 72-52 (p. 829). Passed on January 30 by a vote of 77-43 (p. 836).

Amendments proposed: (1) to insert "shall" instead of "may" in requiring the establishment of tribunals of conciliation. Rejected by a vote of 17-95; (2) to provide that decisions of courts of conciliation shall be final between the parties. Proposed as an additional section:

Sec. 2. Any suitor in any court of this State, shall have the right to prosecute or defend his suit, either in his own proper person or by an attorney or agent of his choice. Rejected (p. 829).

and amendment, as to said Commissioners may seem necessary or proper. Provision shall be made, by law, for filling vacancies, regulating the tenure of office, and the compensation of said Commissioners.<sup>59</sup>

59. Reported by Committee on Practice of Law and Law Reform on November 8, as follows:

Section 1. The General Assembly at its first session after the adoption of this Constitution, shall provide for the appointment of three commissioners, whose duty it shall be to revise, reform, simplify, and abridge the rules and practice, pleadings, forms, and proceedings, both civil and criminal, of the courts of this State. And they shall provide for the abolition of the distinct forms of actions at law now in use, and that justice may be administered in a uniform mode of pleading without reference to any distinction between law and equity. And the General Assembly may also make it the duty of said commissioners to reduce into a systematic code the General Statute Law of this State; and said commissioners shall from time to time, report the result of their labors to the General Assembly, with such recommendations and suggestions as to abridgement and amendment as to said commissioners may seem necessary. Provision shall be made by law for filling vacancies, regulating the tenure of office, and the compensation of said commissioners (p. 214).

A minority of the committee reported the following section:

Sec. —. The General Assembly, at its first session after the adoption of this Constitution, shall provide for the election, by the people, of three commissioners, whose duty it shall be to revise, reform, simplify, and abridge the rules and practice, pleadings, forms and proceedings, both civil and criminal, of the courts of this State; and they shall provide for the abolition of the distinct forms of action at law now in use; and that justice may be administered in a uniform mode of pleading, without reference to any distinction between law and equity. And the General Assembly may also make it the duty of said commissioners to reduce into a written and systematic code, the whole body of the laws of this State, or so much and such parts thereof as said commissioners shall find practicable and expedient. They shall report the result of their labors, from time to time to the General Assembly, for their modification and adoption.

Provision shall be made by law for filling vacancies, regulating the tenure of office and the compensation of said commissioners (p. 215). A minority of the committee reported the following section:

Section 1. The General Assembly, at its first or some subsequent session after the adoption of this Constitution, may provide for the appointment of three commissioners, whose duty it shall be to revise, reform, and simplify the rules, practice, forms and proceedings, civil and criminal, of the courts of this State. And the commissioners shall provide for the abolition of the distinct forms of action now in use. And they shall, from time to time, as their labors progress, report their proceedings to the General Assembly, with such suggestions and recommendations as to said commissioners may seem proper.

Sec. 2. The General Assembly may also make it the duty of said commissioners to reduce into a systematic code, the general statute laws of this State; and they shall, from time to time, report the result of their labors to the General Assembly, with such recommendations and suggestions as to abridgments and amendments as to said commissioners may seem necessary (p. 216). Engrossed without amendment by a vote of 92-30 (p. 742). Recommitted on third reading by a vote of 65-63, with instructions to amend as follows:

Section 1. At the first session after the adoption of this Constitution the General Assembly shall revise and simplify the rules, practice, and pleadings, both criminal and civil, in the courts of this State, or appoint one commissioner to effect that object (p. 765). Reported back to the Convention as follows:

Section 1. The General Assembly, at its first session after the adoption of this constitution shall, at the first of the session, provide for the appointment of three commissioners, whose duty it shall be to revise, reform, simplify, and abridge the rules and practice, pleadings, forms, and proceedings both civil and criminal, of the courts of this State; and they shall provide for the abolition of the distinct forms of action of law now in use; and that justice may be administered in a uniform mode of pleading without reference to any distinction between law and equity, said commissioners shall from

Section 21. Every person of good moral character, being a voter, shall be entitled to admission to practice law in all Courts of justice.<sup>60</sup>

## ARTICLE 8.

### EDUCATION.

Section 1. Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.<sup>61</sup>

time to time report their proceedings to the General Assembly, at said session, for their consideration, and said commission shall expire with the adjournment of said session of the General Assembly (p. 773). After the report of the committee was made, the vote on recommitting was reconsidered by a vote of 98-33 (p. 774). Passed on January 24, by a vote of 97-35 (p. 775). Reported by Committee on Revision on February 7 and concurred in (p. 940).

Proposed amendments: (1) providing that the commission shall not be composed of lawyers; subsequently withdrawn; (2) placing the work of revision in the hands of the General Assembly at its first session.

Proposed as additional sections:

Sec. 2. The commissioners contemplated in the first section of Article No. 34 of this Constitution, shall be elected by the qualified voters of the State.

Adopted and advanced to engrossment by a vote of 75-54 (pp. 777-79).

Sec. 3. The appointment of commissioners authorized by this Constitution, in Article 34, reported to this Convention, shall not be for more than twelve months, nor shall said commissioners receive exceeding three dollars per day for every day they shall be actively employed. Laid on the table by a vote of 77-47 (p. 830). Substitute proposed and rejected by a vote of 39-89:

Sec. 2. Said office of commissioner shall expire so soon as such revision and simplification shall be completed; and the whole compensation paid to each of said commissioners for such revision and simplification of practice and pleadings shall not exceed one thousand dollars (p. 777).

60. Reported by Committee on the Practice of Law on January 27, as follows:

Section 1. Any person of good moral character and possessing the right of suffrage, shall be entitled to admission to practice in all the courts of this State (p. 796). Engrossed without amendment (p. 861). Passed on February 1, by a vote of 84-27 (p. 879). A proposed amendment that lawyers shall be required to possess "requisite qualifications" was rejected.

Sections 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20 and 21 were reported by the Committee on Revision on February 7 (pp. 938-40).

61. Reported by the Committee on Education on December 11, as follows:

Section 1. Knowledge and learning generally diffused through a community being essential to the preservation of a free government, it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement, and to provide by law for a general and uniform system of common schools, wherein tuition, as soon as circumstances will permit, shall be gratis, and equally open to all (p. 408). Engrossed for third reading as follows:

Section 1. Knowledge and learning generally diffused through a community being essential to the preservation of a free government, it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement, and to provide by law for a general and uniform system of common schools, wherein tuition shall be gratis and equally open to all (p. 801). Passed without vote on January 28 (p. 815). Reported by the Committee on Revision on February 7, and concurred in (p. 940).



Section. 2. The Common School fund shall consist of: the Congressional Township fund, and the lands belonging thereto;

The Surplus Revenue fund;

The Saline fund and the lands belonging thereto;

The Bank Tax fund, and the fund arising from the one hundred and fourteenth section of the charter of the State Bank of Indiana;

The fund to be derived from the sale of county seminaries, and the moneys and property heretofore held for such Seminaries; from the fines assessed for breaches of the penal laws of the State; and from all forfeitures which may accrue;

All lands and other estate which shall escheat to the State, for want of heirs or kindred entitled to the inheritance;

All lands that have been, or may hereafter be, granted to the State, where no special purpose is expressed in the grant, and the proceeds of the sales thereof; including the proceeds of the sales of the swamp lands, granted to the State of Indiana by the act of Congress of the twenty-eighth of September, eighteen hundred and fifty, after deducting the expense of selecting and draining the same;

Taxes on the property of corporations, that may be assessed by the General Assembly for common school purposes.<sup>62</sup>

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62. Reported by the Committee on Education on December 11, as follows:

Sec. 4. The common school fund shall consist of the congressional township fund and the lands belonging thereto, the surplus revenue fund, the saline fund and the land belonging thereto, the bank tax fund, and the fund arising from the one hundred and fourteenth section of the charter of the State bank of Indiana, the fund derived from the sale of county seminaries, and the moneys and property heretofore held for such seminaries, the fines assessed for any breach of the penal laws of this State, and all forfeitures which may accrue, all lands and other estate which shall escheat to this State for want of heirs or kindred entitled to the inheritance, all lands that have been, or may hereafter be granted to this State, where no special purpose is expressed in the grant, and the proceeds of the sales thereof, all corporation taxes that may be assessed by the General Assembly for common school purposes, as hereinafter provided. The several counties of this State shall be held liable for the preservation of so much of the said funds as may be intrusted to them, and the payment of the annual interest thereon (p. 408). Engrossed for third reading as follows:

Sec. 4. The common school fund shall consist of the congressional township fund and the lands belonging thereto, the surplus revenue fund, the saline fund and the land belonging thereto, the bank tax fund, and the fund arising from the one hundred and fourteenth section of the charter of the State bank of Indiana, the fund derived from the sale of county seminaries, and the moneys and property heretofore held for such seminaries, the fines assessed for any breach of the penal laws of this State, and all forfeitures which may accrue, all lands and other estate which shall escheat to this State for want of heirs or kindred entitled to the inheritance, all lands that have been, or may hereafter be granted to this State, where no special purpose is expressed in the grant, and the proceeds of the sales thereof, all corporation taxes that may be assessed by the General Assembly for common school purposes, as hereinafter provided. The several counties of this State shall be held liable for the preservation of so much of the said funds as may be intrusted to them, and the payment of the annual interest thereon. The net proceeds of the sales of the "Swamp Lands", granted to the State of Indiana by the act of Congress of 28th September, 1850, after deducting the expenses

Section 3. The principal of the Common School fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of Common Schools, and to no other purpose whatever.<sup>63</sup>

Section 4. The General Assembly shall invest, in some safe and profitable manner, all such portions of the Common School fund as have not heretofore been entrusted to the several counties; and shall make provision, by law, for the distribution, among the several counties of the interest thereof.

Section 5. If any county shall fail to demand its proportion of such interest, for Common School purposes, the same shall be re-invested, for the benefit of such county.<sup>64</sup>

Section 6. The several counties shall be held liable for the preservation of so much of the said fund as may be entrusted to them, and for the payment of the annual interest thereon.<sup>65</sup>

of draining the same, as contemplated by that act, and the expenses of selecting the same (p. 808). Passed on January 28 by a vote of 112-8 (p. 816). Reported by the Committee on Revision on February 7, divided into two sections constituting Sections 2 and 6 of Article 8 of the Constitution as adopted (pp. 940, 953).

Proposed amendments: (1) providing that the State debt shall first be paid before diverting the designated funds to the use of common schools; (2) to strike out the funds derived from the sale of county seminaries and the money and property formerly held by such seminaries; (3) provided, That all claims against any of the county seminaries arising out of the donations for their construction, shall first be paid out of the proceeds of such fund; (4) the sale of any county seminary shall be made subject to all debts, contracts, liabilities, mortgages, or other conveyances of the same in any manner whatever; (5) to eliminate the provision holding counties liable for the preservation of funds entrusted to them and the payment of annual interest; (6) all moneys arising from fines and forfeitures under the penal laws of this State, shall be appropriated exclusively to the use of common schools in the township where the breach of the penal laws may have been committed; (7) provided, that said fund shall revert to the counties for common school purposes, and to individuals who have contributed to said seminary in such proportion as such contributions respectively bear to the whole amount expended for the erection of buildings, procuring lands, etc.

63. Reported by Committee on Education on December 11, as follows:

Sec. 6. The principal of all the said common school funds shall be and remain a perpetual fund, which may be increased, but shall never be diminished, the interest and income of which shall be inviolably appropriated to the maintenance of common schools, and to no other purpose whatever (p. 409). Advanced to engrossment without amendment (p. 823). Passed without vote on January 30 (p. 839). Reported by the Committee on Revision on February 7, and concurred in (p. 953).

64. Reported by Committee on Education on December 11, as follows:

Sec. 7. The General Assembly shall invest in some safe and profitable manner, all such portions of the said common school fund, as have not heretofore been intrusted to the several counties, and make provision by law for the distribution of the interest thereof: Provided, That each county shall be entitled to its proportion of the interest and income of said fund, and if not demanded for common school purposes, shall be invested for the benefit of such county (p. 409). Engrossed without amendment (p. 823). Passed without vote on January 30 (p. 840). Reported by the Committee on Revision on February 7, distributed so as to constitute Sections 4 and 5 of Article 8 of the Constitution as adopted, and concurred in (p. 953).

65. See Note 62, p. 347.

Section 7. All trust funds, held by the State, shall remain inviolate, and be faithfully and exclusively applied to the purposes for which the trust was created.<sup>66</sup>

Section 8. The General Assembly shall provide for the election, by the voters of the State, of a State Superintendent of Public Instruction; who shall hold his office for two years, and whose duties and compensation shall be prescribed by law.<sup>67</sup>

66. Proposed as an additional section on January 27 by Mr. Pettit; adopted by a vote of 81-41 and ordered engrossed.

Sec. 12. All trust funds held by the State shall be faithfully applied to the purposes for which the trust was created (p. 804). Passed by a vote of 73-48 on June 28 (p. 819). Reported by the Committee on Revision on February 7, and was concurred in (p. 954).

The following amendments were proposed and rejected by a vote of 56-68: (1) nothing in this section shall be so construed as to permit the General Assembly from applying the fund and property known as the University Fund, to the use of common schools, with the consent of the Government of the United States; (2) but the General Assembly, with the consent of Congress, shall have the power to convert the State University trust fund to common school education. Rejected by a vote of 58-64.

Proposed additional sections:

Sec. 13. Every bank established under this Constitution shall pay one quarter of one per centum bonus, on the capital stock for common school purposes; and each bank dividing ten per centum, or over, profit, on the capital stock established as aforesaid, shall, in like manner, pay over to the State for the use of common schools the half of one per centum on the capital stock of each branch. Laid on the table (p. 808).

Sec. —. The fines and forfeitures now constituting the seminary fund shall in no case be applied to common school purposes, until all the debts of such seminary, heretofore contracted, be fully paid. Rejected (p. 816).

Sec. 14. The General Assembly shall have power, whenever the public interest may seem to require, to consolidate all the funds specified in Section 4, No. 45, together with all other funds at any time hereafter appropriated for the use of common schools, and, so far as may be legal and practicable, shall invest the same or the proceeds thereof, in the bonds constituting the State debt: Provided, That the said consolidated fund, principal and interest, shall be placed to the credit of the common school fund; the interest of which, at six per centum per year, shall be forever appropriated to the support of common schools. Laid on the table by a vote of 76-44 (pp. 823-24).

Sec. 15. That the trustees of each township, or the proper officers, have the power to distribute the school funds, among the common schools in each township, according to the number of scholars in each school. Laid on the table (p. 824).

Sec. 16. The General Assembly shall apply such portion of the common school fund to the establishment of district school libraries as may be deemed expedient. Laid on the table (p. 825).

Sec. 17. All lands and town lots which shall be delinquent for the non-payment of State and county tax, shall be forfeited to the State; and on failure of the owner or owners thereof to redeem the same within a prescribed period, such lands and town lots shall be sold and the proceeds thereof as well as the money paid for the redemption of any delinquent lands and lots (after the payment of taxes, interest and costs), shall be paid into the common school fund. Laid on the table (p. 825).

67. Proposed as an additional section by Mr. Morrison of Washington on January 27:

Sec. 8. The General Assembly shall provide for the election by the people, of a State Superintendent of Public Instruction, to hold his office for two years, and whose powers, duties and compensation shall be prescribed by law (p. 801). Adopted and advanced to engrossment by a vote of 78-50 (p. 801.) Passed on January 28 without vote (p. 817). Reported by Committee on Revision on February 7, and concurred in (p. 801).

Sections proposed and rejected:

Sec. 9. In any school district in this State, the qualified voters thereof, may de-



## ARTICLE 9.

## STATE INSTITUTIONS.

Section 1. It shall be the duty of the General Assembly to provide, by law, for the support of Institutions for the education of the Deaf and Dumb, and of the Blind; and also, for the treatment of the Insane.<sup>68</sup>

Section 2. The General Assembly shall provide houses of refuge, for the correction and reformation of juvenile offenders.<sup>69</sup>

Section 3. The county boards shall have power to provide farms, as an asylum, for those persons, who, by reason of age, infirmity, or other misfortune, have claims upon the sympathies and aid of society.<sup>70</sup>

## ARTICLE 10.

## FINANCE.

Section 1. The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for

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eide by a vote whether or not they will have any other language taught in connection with the English language, in the common school of their district. Rejected (p. 803).

See. 10. No school district shall be deprived of its share of the school fund for the want of a school house in such district or from any cause whatever. Rejected (p. 803).

68. Reported by Committee on Public Institutions on December 18, as follows:

Sec. —. It shall be the duty of the General Assembly to provide by law for the support of institutions for the education of the deaf and dumb, of the blind, and for the treatment of the insane (p. 463). Engrossed for third reading without amendment (p. 825). Passed without vote on January 30 (p. 835). The following proposed substitute was rejected:

Section 1. It shall be the duty of the General Assembly to provide one or more farms to be an asylum for those persons who, by reason of age, infirmity, or other misfortunes, may have a claim upon the aid and beneficence of society, on such principles that such persons may therein find employment and every reasonable comfort, and lose, by their usefulness, the degrading sense of dependence (p. 825).

69. Reported by Committee on Public Institutions on December 18, as follows:

Sec. —. The General Assembly shall have the power to provide houses of refuge for the correction of juvenile offenders (p. 463). Engrossed as follows:

Sec. —. The General Assembly shall provide houses of refuge for the correction of juvenile offenders (p. 826). Passed without vote on January 30 (p. 835).

70. Reported by Committee on Public Institutions on December 18, as follows:

Sec. —. The county boards shall have the power to provide farms to be an asylum for those persons who, by reason of age, infirmity, or other misfortunes may have a claim upon the sympathies and aid of society (p. 463). Engrossed without amendment (p. 826). Passed without vote on January 30 (p. 835). This article was reported by the Committee on Revision on February 7, and concurred in (p. 954).

municipal, educational, literary, scientific, religious or charitable purposes, as may be specially exempted by law.<sup>71</sup>

Section 2. All the revenues derived from the sale of any of the public works belonging to the State, and from the net annual income thereof, and any surplus that may, at any time, remain in the treasury, derived from taxation for general State purposes, after the payment of the ordinary expenses of the government, and of the interest on bonds of the State, other than bank bonds, shall be annually applied, under the direction of the General Assembly, to the payment of the principal of the public debt.<sup>72</sup>

Section 3. No money shall be drawn from the treasury, but in pursuance of appropriations made by law.<sup>73</sup>

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71. Proposed as an additional section, to be numbered 43, to the Article on the legislative department, by Pettit, on December 23, as follows:

Sec. 43. The General Assembly shall provide by law a uniform rule of assessment and taxation, and shall prescribe such regulations as will secure a just valuation, for taxation, of all property, both real and personal (p. 517). Referred to a select committee of five with the following proposed amendments pending: (1) excepting only such for municipal, educational, charitable, or religious purposes as may be specially exempted by law; (2) except all property owned by the State or any county, and all school houses, cemeteries, and grounds upon which religious edifices are erected, not exceeding in value two thousand dollars, shall not be taxed (p. 517). Reported on February 3, as follows:

Section 1. The General Assembly shall provide by law a uniform rule of assessment and taxation, and shall prescribe such regulations as will secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, religious, or charitable purposes, as may be specially exempted by law (p. 890). Engrossed without amendment and passed at once without vote (p. 917). Reported by the Committee on Revision on February 7 (p. 954). An amendment providing for the establishment of a central board of equalization was rejected.

72. Reported by Committee on State Debt and Public Works on November 15, as follows:

Section 1. All the revenue derived from the sale of any of the public works belonging to the State, and from the net annual income thereof, and any surplus that may at any time remain in the treasury, derived from taxation for general State purposes, after the payment of the ordinary expenses of the government, and the interest on bonds of the State (other than bank bonds), shall be annually applied under the direction of the General Assembly, to the payment of the principal of the public debt (p. 253). Engrossed for third reading without amendment (p. 777). Passed without vote on January 25 (p. 785).

Amendments proposed and rejected: (1) the faith of the State being pledged for the payment of all existing indebtedness, in order to provide therefor, the present rate of taxation, to wit: twenty-five cents on each hundred dollars of taxable property in this State, and seventy-five cents on each poll, subject by the existing laws to taxation, shall be continued until such indebtedness shall be fully discharged; (2) and the sum of fifty thousand dollars annually with the addition each year of five per centum on the amount set apart the previous year, shall be levied as a specific tax, for the period of twenty-five years, and expended each year in the purchase of the State bonds of the State of Indiana, unless the State debt shall be sooner paid. Rejected by a vote of 8-112.

73. Reported by Committee on Finance and Taxation on October 29, as follows:

Section 1. No money shall be drawn from the treasury but in consequence of appropriations made by law (p. 152). Engrossed for third reading without amendment (p. 318). Passed on December 4, by a vote of 119-3 (p. 346). Reported by the Committee on Revision on February 7 and concurred in (p. 955). On October 31, the Committee on the Legislative Department reported the following section:

Sec. 25. No money shall be drawn from the treasury but in consequence of

Section 4. An accurate statement of the receipts and expenditures of the public money, shall be published with the laws of each regular session of the General Assembly.<sup>74</sup>

Section 5. No law shall authorize any debt to be contracted, on behalf of the State, except in the following cases: to meet casual deficits in the revenue; to pay the interest on the State debt; to repel invasion, suppress insurrection, or, if hostilities be threatened, provide for the public defense.<sup>75</sup>

appropriations made by law, and an accurate statement of the receipts and expenditures of the public moneys shall be attached to and published with the laws at every session of the General Assembly (p. 169). Laid on the table on second reading (p. 470).

74. Reported by Committee on Finance and Taxation on October 29, as follows:

Sec. 2. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws of each regular session of the General Assembly (p. 152). Engrossed for third reading as follows:

Sec. 2. An accurate statement of the receipts and expenditures of the public money shall be published with the laws of each regular session of the General Assembly (p. 318). Passed on December 4 by a vote of 119-3 (p. 346). Reported by the Committee on Revision on February 7, and concurred in (p. 955). On October 31, the following section was reported by the Committee on the Legislative Department:

Sec. 25. No money shall be drawn from the treasury but in consequence of appropriations made by law, and an accurate statement of the receipts and expenditures of the public moneys shall be attached to and published with the laws at every session of the General Assembly (p. 169). Laid on the table on second reading (p. 470).

Amendments proposed and rejected: (1) requiring a statement of loans authorized by the legislature to be published with the receipts and expenditures; (2) requiring the State auditor and treasurer to report annually to the Governor who should publish the report for the information of the public; (3) requiring statements with the laws of all sessions.

75. Reported by the Committee on State Debt and Public Works on October 26, as follows:

Sec. 2. The General Assembly may contract debts to meet casual deficits or failures in the revenue, for the purpose of paying the interest on the State debt; but such debt shall not, at any time, exceed one hundred thousand dollars: Provided, That the State may contract debts to repel invasion, suppress insurrection, or if hostilities are threatened, provide for public defence (p. 138).

Sec. 3. No act of the General Assembly shall authorize any debt to be contracted on behalf of this State, except for the purposes mentioned in the second section of this article, unless provision be made therein to levy and collect an annual tax, sufficient in amount to pay the interest thereon, and to discharge the debt within twenty-five years; nor shall such act take effect until it shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for or against it (p. 138).

Sec. 4. The General Assembly shall have no power to pass laws to diminish the resources of the sinking fund, as now established by law, but may pass laws to increase it (p. 138). Reported Section 2, was amended on second reading as follows:

Sec. 2. The General Assembly may contract debts to meet casual deficits or failures in the revenue, for the purpose of paying the interest on the State debt; but such debt shall not, at any time, exceed the amount of such deficit: Provided, That the State may contract debts to repel invasion, suppress insurrection, or if hostilities are threatened, provide for public defence (p. 275). Passed on November 21 by a vote of 111-6 (p. 177). Reported Section 3, was advanced to engrossment, by a vote of 89-38, as follows:

Sec. 3. No act of the General Assembly shall authorize any debt to be contracted on behalf of this State, except for the purposes mentioned in the second section of this article (pp. 279-83). Passed on November 23 by a vote of 91-32 (p. 290). Reported



Section 4, with a pending amendment that "the debts and liabilities of this State shall be held sacred and obligatory" was laid on the table (p. 284). Reported by the Committee on Revision on February 7, so consolidated as to constitute Section 5 of Article 10 of the Constitution as adopted, and concurred in (p. 954).

Amendments proposed and rejected: (1) fixing the limit of the State debt at \$100,000 for each 150,000 voters; (2) to limit the State in contracting future debts to an amount equal to the interest accruing on the then State debt; (3) fixing the debt limit at \$200,000; (4) to eliminate the referendum on State debts; (5) there shall not be established or incorporated in this State, any banking company or moneyed institution for the purpose of issuing bills of credit, or bills payable to order or bearer: Provided, That nothing herein contained shall be so construed as to prevent the General Assembly from establishing a State bank and branches, not exceeding one for any three counties, to be established at such place within such counties as the directors of the State bank may select: Provided, there be subscribed and paid in specie, on the part of individuals, a sum equal to thirty thousand dollars, and for the purpose of establishing said bank, the legislature shall have full power, on the part of the State, to create the stock of said State bank and branches, on loans made on the credit of the State, or upon the existing bank funds of the State, and for that purpose the legislature may extend or renew the existing loans for bank purposes, on the part of the State; (6) prohibiting the State from engaging in any internal improvements; (7) to bind the State to pay interest annually and the principal in 25 years; (8) authorizing the General Assembly to take stock in a State bank, rejected by a vote of 55-65; (8) the General Assembly shall never pass an act to create any State debt, except as named in Section —, unless said act provided that the interest shall be paid annually, and the principal liquidated in twenty years, nor then, until it shall have been submitted as a distinct proposition to the people at a general election, and received their sanction by a majority; (9) unless such debt shall be authorized by a law for some single object therein distinctly specified, together with the amount; and such law shall provide for the collection of a sufficient direct annual tax to pay the interest on such debt as it shall fall due, and also to discharge the principal within — years from the contracting thereof. And on the final passage of such bill in either house of the legislature, the question shall be taken by ayes and noes entered on the journal thereof, and shall be "shall this bill pass, and ought the same to receive the sanction of the people." And no such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for or against it. No such law shall be submitted to be voted on within three months after its passage, or at any general election, when any other law, or any amendment to the Constitution shall be submitted to be voted for or against. The money arising from any loan or stock creating such debt or liability shall be applied to the object specified in the act authorizing such debt or liability, or for the repayment of such debt or liability, and for no other purpose whatever. Both rejected by a vote of 55-74; (10) unless such debt shall be authorized by law for some single work or object therein distinctly specified, together with the amount; but such debt or debts, direct or contingent, singly or in the aggregate, shall not, at any time, exceed one million of dollars; and such law shall provide for the collection of a sufficient direct annual tax to pay the interest on such debt, as it may fall due, and also to discharge the principal within eighteen years from the contracting thereof; and the law levying such tax shall be irrevocable until the principal and interest thereon shall be paid and discharged. And on the final passage of such bill, in either house of the legislature, the question shall be taken by ayes and noes, and entered on the journal thereof, and shall be, "Shall this bill pass, and ought the same to receive the sanction of the voters of this State?" And no such law shall take effect until it shall, at a general election, have been submitted to the voters, and have a majority of all the votes cast for or against it. No such law shall be submitted to be voted on within six months after its passage, nor until it shall be published in at least one newspaper in each county, if one be published therein, throughout the State, for three months next preceding the election at which it is submitted to the people; and said law shall not be submitted at any general election when any other law shall be submitted to be voted for or against. The money arising from any loan, or stock, creating such debt or liability, shall be applied to the object specified in the act authorizing such debt or liability, or for the repayment of such debt or liability, and for no other purpose whatever. Rejected by vote of 35-86.

Section 6. No county shall subscribe for stock in any incorporated company, unless the same be paid for at the time of such subscription; nor shall any county loan its credit to any incorporated company, nor borrow money for the purpose of taking stock in any such company; nor shall the General Assembly ever, on behalf of the State, assume the debts of any county, city, town or township, nor of any corporation whatever.<sup>76</sup>

## ARTICLE 11.

### CORPORATIONS.

Section 1. The General Assembly shall not have power to establish, or incorporate, any bank or banking company, or moneyed institution, for the purpose of issuing bills of credit, or bills payable to order or bearer, except under the conditions prescribed in this Constitution.<sup>77</sup>

76. Reported by committee to whom a resolution relative to internal improvements by counties was referred, on November 6, as follows:

Section 1. No county shall subscribe for stock in any incorporated company, unless the same be paid for at the time of such subscription. Nor shall any county loan her credit to, or borrow money for, the purpose of taking stock in any incorporated company (p. 202). Engrossed for third reading as follows:

Section 1. No county shall subscribe for stock in any incorporated company, unless the same be paid for at the time of such subscription. Nor shall any county loan her credit to, or borrow money for, the purpose of taking stock in any incorporated company; nor shall the General Assembly ever, on behalf of the State, assume the debts of any county, city, town, or township, within this State or of any corporation whatever (pp. 702-4). Passed on January 18, by a vote of 93-22 (p. 712). Reported by the Committee on Revision on February 7, and concurred in (p. 954).

Proposed amendments providing that "Boards doing county business shall not appropriate money for internal improvements, nor buy stocks in any corporations without a vote of the people of such county in favor of the same;" that "the State shall never assume the debts of any individual, corporation or company;" "that any further restrictions on the rights of the people are unnecessary," and that "no county shall subscribe for stock in any incorporated company without the consent of a majority of all the voters of said county having been first obtained," were rejected.

77. Proposed by Mr. Owen as an additional section on January 10.

Sec. 9. The General Assembly shall not have the power to establish or incorporate in this State, any bank or banking company or moneyed institution, for the purpose of issuing bills of credit or bills payable to order or bearer, except under the conditions prescribed in this constitution, and that all banking in this State shall be upon a specie basis actually paid in (pp. 633-34).

The last clause providing that all banking must be on a specie basis was adopted by a vote of 98-39; the entire section as amended was adopted by a vote of 79-59. The section was advanced to engrossment by a vote of 77-60 (p. 639). Recommitted on third reading with instructions to amend as follows:

Sec. 9. The General Assembly shall not have the power to establish or incorporate in this State, any bank or banking company or moneyed institution, for the purpose of issuing bills of credit or bills payable to order or bearer, except under the conditions prescribed in this constitution, and that all banking in this State shall be upon a specie basis actually paid in. Such specie basis shall be to the full amount of their circulation, or the difference between the two shall be made up by ample security for



Section 2. No banks shall be established otherwise than under a general banking law, except as provided in the fourth section of this article.

Section 3. If the General Assembly shall enact a general banking law, such law shall provide for the registry and countersigning, by an officer of State, of all paper credit designed to be circulated as money; and ample collateral security, readily convertible into specie, for the redemption of the same in gold or silver, shall be required; which collateral security shall be under the control of the proper officer or officers of State.

Section 4. The General Assembly may also charter a bank with branches, without collateral security, as required in the preceding section.<sup>78</sup>

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the redemption of the bills in specie, to be deposited with some officer of State (p. 644). The supplemental provision was adopted by a vote of 74-64; the section with instructions was recommitted by a vote of 73-65. Subsequently the vote on recommitting was reconsidered by a vote of 68-65. The Convention refused to recommit with instructions by a vote of 63-71. Passed without amendment by a vote of 78-59 (p. 648). Reported by the Committee on Revision on February 7 (p. 955).

78. Reported by Committee on Currency and Banking on November 5, as follows:

Sec. 2. No bank shall receive directly or indirectly any more interest than shall be allowed by law, to be secured by persons loaning individual money (p. 194). Report submitted by minority of Committee on Currency and Banking:

Sec. —. Any bank established under this article shall not, either directly or indirectly, charge or receive any more interest for moneys loaned than the law of this State, for the time being, shall allow individual citizens to charge or receive (p. 196). Reported Section 2 was amended on second reading as follows, by a vote of 86-52, and was advanced to engrossment:

Sec. 2. No bank shall receive directly or indirectly, a greater rate of interest than shall be allowed by law, to be secured by persons loaning individual money. The legislature shall not have power to authorize any system of banking except under a general law based on the principles of ample security for the redemption of the bills in specie, to be filed with some State officer, registry of notes, preference in payment to bill holders in case of insolvency, and individual liability of stockholders to an equal amount with their stock: Provided, however, That the legislature may also have authority to charter a bank and branches, without collateral security as required above, which branches shall be mutually responsible for the circulation of each other, the stockholders of which shall be individually liable to an equal amount with their stock, and in which the State shall not be a partner. But this shall not be construed to prohibit the investing of the trust funds, their security to be suitably guaranteed (pp. 673-76). Passed on January 15 by a vote of 81-56 (p. 678). Reported by the Committee on Revision on February 7, distributed so as to constitute Sections 2, 3, 4, 9 and 11 of Article 11 of the Constitution as adopted (p. 955).

Amendments proposed and rejected: (1) No issue, discount, or exchange shall ever be authorized or permitted on any security other than gold and silver of the bank. Rejected by a vote of 41-86; (2) the General Assembly shall, at its first session after the adoption of the Constitution, provide, by general laws for the establishment of a system of free banking on good and sufficient securities, and shall also continue the present State Bank and Branches until the year one thousand eight hundred and sixty-two; after which time there shall be no other banks in this State than those existing under said general laws. Rejected by a vote of 17-117; (3) but such charter shall not extend beyond the period of eight years from the expiration of the charter of the present State Bank, and its capital stock or profits shall, in all cases, be subject to the same rate of taxation with other banks.



Section 5. If the General Assembly shall establish a bank with branches, the branches shall be mutually responsible for each other's liabilities, upon all paper credit issued as money.<sup>79</sup>

Section 6. The stockholders in every bank, or banking company shall be individually responsible, to an amount, over and above their stock, equal to their respective shares of stock, for all debts or liabilities of said bank or banking company.<sup>80</sup>

Section 7. All bills or notes issued as money shall be, at all times, redeemable in gold or silver; and no law shall be passed, sanctioning, directly or indirectly, the suspension, by any bank or banking company, of specie payments.<sup>81</sup>

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79. Proposed as an additional section by Mr. Owen on January 13.

See. 10. The branches of any bank that may be established with branches shall be mutually responsible for each other's liabilities upon bills or notes issued as money. The State shall not be a stockholder in any bank after the expiration of the present State Bank charter; nor shall the credit of this State ever be given or loaned in aid of any person, association, or corporation; nor shall the State hereafter become a stockholder in any corporation or association (pp. 655-59).

The provision prohibiting the State's being a stockholder in banks in the future was adopted by a vote of 72-56; the provision forbidding the State to loan its credit to any person, association or corporation, by a vote of 88-57. The section was then advanced to third reading (p. 661). Passed January 14 by a vote of 89-53 (p. 668). Reported by the Committee on Revision on February 7, divided into two sections to constitute Sections 5 and 12 of Article 11 of the Constitution as adopted (p. 955).

80. Reported by Committee on Currency and Banking on November 5, as follows:

See. 5. The stockholders shall be individually responsible to an amount equal to that of their respective shares of stock for all the debts or liabilities of every kind (p. 194). Report submitted by minority of Committee on Currency and Banking:

See. —. Every stockholder of said State Bank, or of any of the branches thereof, shall be individually liable for all debts contracted by said bank, or any of the branches, during the time he shall be such stockholder, to an amount equal to the stock owned by him at the time any such debt may have been contracted (p. 197). Engrossed for third reading as follows:

See. 5. The stockholders shall be individually responsible to an amount over and above their stock, equal to that of their respective shares of stock for all the debts or liabilities of every kind (p. 690). Passed on January 16 by a vote of 95-10 (p. 695). Reported by Committee on Revision on February 7, and concurred in (p. 956). The following substitute, proposed on third reading, was rejected by a vote of 62-69: The stockholders in every corporation or association for banking purposes issuing bank notes, or any kind of paper credit to circulate as money, shall be individually responsible for all the notes or bills issued or put in circulation by said corporation or association.

81. Reported by Committee on Currency and Banking on November 5, as follows:

See. 6. No authority shall be given sanctioning in any manner the suspension of specie payment (p. 194). Report submitted by minority of Committee on Currency and Banking:

See. —. The legislature shall not have power to grant or approve of a suspension of specie payment by any bank or branch established under this article (p. 196). Engrossed for third reading without amendment (p. 690). Recommitted on third reading by a vote of 70-51 with instructions to add the proviso that "all collateral security required under a general banking law, shall be readily convertible" (pp. 696-98). Reported back to the Convention amended according to instructions on January 21, and passed by a vote of 114-14 (p. 731). An amendment proposed on third reading that "all charters shall be repealable by the legislature" was rejected by a vote of 57-70.

Section 8. Holders of bank notes shall be entitled, in case of insolvency, to preference of payment over all other creditors.<sup>82</sup>

Section 9. No bank shall receive, directly or indirectly, a greater rate of interest than shall be allowed by law, to individuals loaning money.<sup>83</sup>

Section 10. Every bank or banking company, shall be required to cease all banking operations, within twenty years from the time of its organization, and promptly thereafter to close its business.<sup>84</sup>

Section 11. The General Assembly is not prohibited from investing the trust funds in a bank with branches; but in case of such investment, the safety of the same shall be guaranteed by unquestionable security.<sup>85</sup>

Section 12. The State shall not be a stockholder in any bank, after the expiration of the present bank charter; nor shall the credit of the State ever be given, or loaned, in aid of any person, association or corporation; nor shall the State hereafter become a stockholder in any corporation or association.<sup>86</sup>

Section 13. Corporations, other than banking, shall not be created by special act, but may be formed under general laws.<sup>87</sup>

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82. Reported by Committee on Currency and Banking on November 5, as follows:

Sec. 4. The billholders shall be entitled to preference of payment over all other creditors in case of insolvency (p. 194). Engrossed for third reading without amendment (p. 688). Passed without vote on January 16 (p. 695). Reported by Committee on Revision on February 7, and concurred in (p. 956).

83. See Note 78, p. 355.

84. Proposed as an additional section by Mr. Dunn of Jefferson, on January 15.

Sec. 14. Every company authorized by special act of incorporation to issue bills or notes to circulate as money, and every association organized under a general banking law, shall be required to close up its business within twenty years from the time such company or association shall have been organized (p. 683). Adopted and advanced to engrossment (pp. 683-84). Passed on January 16 by a vote of 107-8 (pp. 698-700).

Amendments proposed and rejected: (1) as a substitute: No privilege, franchise or immunity shall be granted for any purpose connected with the business of banking which may not be repealed, altered, or amended by the General Assembly. Rejected by a vote of 58-68; (2) as an addition: The legislature, every twentieth year after the passage of any law or laws authorizing any bank or banking institution may repeal the same; (3) requiring every chartered bank to close up its business in ten years.

85. See Note 78, p. 355.

86. See Note 79, p. 356. The following section was reported by the Committee on State Debt and Public Works on October 26:

Section 1. The credit of this State shall never be given or loaned in aid of any person, association or corporation (p. 138). Laid on the table on second reading (p. 700).

Amendments proposed and rejected; (1) to strike out the entire section; (2) prohibiting any county from giving its credit in aid of any person or association.

87. Reported by Committee on Corporations on November 29, as follows:

Section —. Corporations shall not be created by special acts, but may be formed under general laws. All laws conferring corporate powers, may be altered from time to time, or repealed (p. 309). Engrossed for third reading as follows:

Sec. —. Corporations shall not be created by special acts, except in such cases as

Section 14. Dues from corporations, other than banking, shall be secured by such individual liability of the corporators, or other means, as may be prescribed by law.<sup>88</sup>

## ARTICLE 12.<sup>89</sup>

### MILITIA.

Section 1. The militia shall consist of all able bodied white male persons, between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States, or of this State; and shall be organized, officered, armed, equipped, and trained, in such manner as may be provided by law.

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are authorized in this Constitution, but may be formed under general laws. All laws conferring corporate powers, may be altered from time to time, or repealed (p. 799). Laid on the table on third reading by a vote of 73-52 (p. 812).

Reported in the form in which it was incorporated in the Constitution by the Committee on Revision on February 7 (p. 959).

88. The following section was reported by the Committee on Corporations on December 3.

Sec. —. Each stockholder in a corporation shall be individually responsible for all the debts and liabilities of such corporation, which shall have been contracted or incurred while he or she remains a stockholder therein, in the proportion which his or her stock may bear to the whole stock of the corporation. The mode of enforcing the liability herein required shall be prescribed by law (p. 337). Engrossed for third reading without amendment (p. 800). Recommitted on third reading by a vote of 69-56 with instructions to amend as follows: Dues from corporations not possessing banking powers and privileges shall be secured by such individual liabilities of the corporators, or other means, as may be prescribed by law (p. 814). Reported back to the Convention on January 31 amended according to instructions and passed by a vote of 85-36.

Section 1. Dues from corporations not possessing banking powers or privileges, shall be secured by such individual liabilities, or other means, as may be prescribed by law (p. 853.) Reported by the Committee on Revision on February 7 (p. 956). Proposed as an additional section:

Sec. 2. In estimating the compensation to be made for private property taken for the use of any corporation, the damages shall be assessed irrespective of any advantage to the owner from the use to which the same may be applied. Laid on the table (p. 800).

89. Reported by Committee on the Militia of the State on November 1, as follows:

Section 1. The militia of the State of Indiana shall consist of all free, able-bodied male persons, negroes and mulattos excepted, resident in said State, between the ages of eighteen and forty-five years, and the General Assembly shall, at its first session after the adoption of this Constitution, provide for the annual enumeration of said militia by the assessors of each county, or otherwise, a copy of which enumerations shall be returned by the clerks of the several counties to the General, and by him make a basis upon which to draw such arms and munitions as may from time to time be due the State from the United States.

Sec. 2. The said militia shall be divided into sedentary militia and active militia. The sedentary militia shall consist of all the militia not enrolled in independent volunteer companies, and shall never be called on to do military duty except in case of insurrection, invasion, or war.

The active militia shall consist of independent volunteer companies of cavalry, artillery, grenadiers, infantry, light infantry, riflemen; each company to contain at least thirty-two rank and file, and the members of said companies shall have such exemptions and immunities as the General Assembly may provide by law.



Sec. 3. The companies constituting the active militia shall each elect by ballot its own captain and subalterns, and each captain may appoint the non-commissioned officers of his company: Provided, That no more than three companies of the active militia shall be formed in any one county.

Sec. 4. The companies composing the active militia may form themselves into battalions, regiments, brigades and divisions. Field officers of regiments and separate battalions shall be elected by the commissioned officers of regiments and separate battalions; brigadier generals shall be elected by the commanders of the regiment in separate battalions composing such brigade; major generals shall be chosen by the commanders of the brigades composing each division; major and brigadier generals and commanding officers of regiments and separate battalions, shall appoint the staff officers of their respective divisions, brigades, regiments, or separate battalions.

Sec. 5. The Governor shall nominate with the consent of the Senate, an adjutant general, a commissary general, and a quarter-master general, whose commissions shall expire with the time for which the Governor shall have been elected. The Governor shall appoint his own aides-de-camp.

Sec. 6. The General Assembly shall provide by law for drawing the regular quotas of arms and munitions that may from time to time be due the State, and for the proper security and safe keeping of the same; and the companies composing the active militia shall be entitled to draw such arms and munitions from the State as they may require, upon giving approved security for the safe keeping of the same to the quarter-master general.

Sec. 7. Every commissioned officer of the active militia shall be commissioned for the term of three years, and until his successor is elected, and no commissioned officer shall be removed from office unless by the Senate, upon the recommendation of the Governor, stating the grounds on which such removal is recommended, or by the decision of a court martial, pursuant to law.

Sec. 8. The General Assembly shall provide by law for the building, or procuring of a building, to be used as a State armory, for the security and safe keeping of all arms and munitions that may at any time belong to the State, and not in the hands of companies; said armory to be under the care and superintendence of the quarter-master general, who shall be held responsible for the safe keeping and good order of such arms and munitions as may come into his possession.

Sec. 9. The General Assembly shall enact a general military company incorporation law, by which any organized company of the active militia, of the proper size, may incorporate itself with power to enforce such rules and regulations among its members as it may adopt for its government, and with such other powers as may be deemed expedient.

Sec. 10. The General Assembly may, at any time, in prospect of insurrection, invasion, or war, provide for the organization of the sedentary militia (pp. 181-83).

On December 27, on second reading, the entire article was recommitted with the following pending amendments to Section 1: (1) to strike out the whole article except the following: Section 1. The militia of the State of Indiana shall consist of all free, able-bodied male persons, negroes and mulattoes excepted, resident in said State, between the ages of eighteen and forty-five years, who shall be organized and disciplined in such manner as may be prescribed by law. All such inhabitants of this State, as from scruples of conscience may be averse to bearing arms, shall be excused therefrom upon such conditions as shall be prescribed by law; (2) providing for the enumeration of the militia once every five years (pp. 552, 564). On January 2, the committee reported seven sections substantially in the form they were finally adopted. The entire article was engrossed for third reading without amendment (p. 589). A minority of the committee reported the following sections:

Section 1. The militia of the State of Indiana shall consist of all able-bodied male persons, negroes and mulattoes excepted, resident in said State between the ages of eighteen and forty-five years, and the General Assembly shall provide for such an organization of said militia as will meet the requirements of the laws of Congress, to enable the State to draw her proper quotas of arms.

Sec. 2. The officers of the militia shall at least once in every five years make returns of said militia to the adjutant general, and said officers while engaged in making said returns shall have such compensation as may be provided by law.

Sec. 3. The General Assembly shall pass laws to encourage the formation of independent volunteer companies, and for this purpose may divide the militia into sedentary and active.

Section 2. The Governor shall appoint the adjutant, quartermaster, and Commissary Generals.

Section 3. All militia officers shall be commissioned by the Governor, and shall hold their offices not longer than six years.

Section 4. The General Assembly shall determine the method of dividing the militia into divisions, brigades, regiments, battalions, and companies, and fix the rank of all staff officers.

Section 5. The militia may be divided into classes of sedentary and active militia, in such manner as shall be prescribed by law.

Section 6. No person, conscientiously opposed to bearing arms, shall be compelled to do militia duty; but such person shall pay an equivalent for exemption; the amount to be prescribed by law.

## ARTICLE 13.<sup>90</sup>

### NEGROES AND MULATTOES.

Section 1. No negro or mulatto shall come into or settle in the State, after the adoption of this Constitution.

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Sec. 4. The General Assembly shall provide for the appointment or election of all officers necessary to the organization of the militia, and shall fix the terms for which said officers may hold their offices (p. 590). Read a third time on January 3 and passed by a vote of 81-33 (p. 599). The following substitute was proposed on third reading and rejected:

Section 1. The legislature may provide by law for organizing and disciplining the militia in such manner as they shall deem expedient, not incompatible with the constitution and laws of the United States.

Sec. 2. The legislature may provide for the efficient discipline of the officers, commissioned and non-commissioned, and musicians, and shall provide by law for the organization and discipline of volunteer companies.

Sec. 3. Officers of the militia shall be elected or appointed in such manner as the legislature shall from time to time direct, and shall be commissioned by the Governor.

Sec. 4. The Governor shall have power to call forth the militia, to execute the laws of the State, to suppress insurrection, and repel invasion (p. 599). Reported by the Committee on Revision on February 7, and concurred in (p. 960).

90. The following section was reported by the Committee on Rights and Privileges on October 26:

Sec. 4. The General Assembly, at the first session under the amended Constitution, shall pass laws prohibiting negroes and mulattoes from coming into or settling in this State; and prohibiting any negro or mulatto from purchasing or otherwise acquiring real estate hereafter (p. 138). Amended on second reading as follows:

Sec. 4. The General Assembly, at the first session under this Constitution, shall pass laws prohibiting negroes and mulattoes from coming into or settling in this State; and prohibiting any negro or mulatto from purchasing real estate hereafter (pp. 245-46).

On October 31, the Committee on Rights and Privileges reported the following additional sections: And no negro or mulatto shall be competent as a witness, except in pleas of the State against negroes and mulattoes, and in civil cases to which negroes or mulattoes alone are parties (p. 164).

Sec. —. There shall be an annual appropriation, not exceeding ten thousand dollars, set apart by law for the gradual colonization of so many of the negroes and mulattoes now in this State as shall desire to leave it, and shall not have the means to do so (p. 165). This report was never considered. Pending consideration on second



reading, the question was referred to a select committee of one from each congressional district. Reference to this committee was adopted by a vote of 74-48 (p. 270). Proposed instructions to the select committee:

1. To inquire into the best means of ultimately separating the white and colored races in Indiana, and also into the expediency of incorporating in one article all Constitutional provisions relative to negroes and mulattoes, and submitting the same separately to the people. Rejected by a vote of 60-63 (pp. 268-71).

2. And that the committee also inquire into the expediency of striking out the entire section, as reported by the committee, and insert the following: The General Assembly shall pass laws, with as little delay as practicable, prohibiting negroes and mulattoes from coming into, or settling in this State, and prohibiting all negroes and mulattoes who have come into this State, since the 10th day of February, 1831, and who have not complied with the provisions of the act of the General Assembly of this State, entitled, "An act concerning free negroes and mulattoes, servants and slaves," approved February 10, 1831, from purchasing real estate, or any interest therein hereafter. Rejected (p. 268).

3. The General Assembly shall pass laws providing that any free negro or mulatto, hereafter immigrating to, and refusing to leave this State, or having left shall return and settle within this State, shall be deemed guilty of a misdemeanor, and punished by confinement in the county jail, or apprenticed for the term of not less than six months, and the proceeds shall be applied to sending such negro or mulatto to Liberia, if he will consent to go there, if not, the same shall be donated to the Colonization Society in trust, for the benefit of those negroes in this State who are willing to emigrate to Liberia. Adopted (p. 272).

4. Any person who shall knowingly permit any negro or mulatto, coming into this State after the adoption of this Constitution, to occupy any real estate of which such person may be the owner, shall forfeit such real estate to the county in which the same lies, for common school purposes. Adopted (p. 272).

5. That the committee be instructed to inquire whether the legislature will not possess ample powers to pass laws to prevent the immigration of negroes and mulattoes to this State, without any express provision in the Constitution on that subject, and if so, whether there is any necessity for making any such provision. Rejected (p. 273). On December 21, a resolution was introduced requiring the select committee to report by December 30. Laid on the table (p. 500). On January 13, the select committee reported the following resolutions:

Section 1. No negro or mulatto shall come into and settle in this State after the adoption of this Constitution.

Sec. 2. All contracts made with negroes and mulattoes coming into this State, contrary to the provision of the first section of this article shall be void; and all persons who shall employ, or otherwise encourage such negroes or mulattoes to remain in this State shall be fined in any sum not less than ten, nor more than five hundred dollars.

Sec. 3. There shall be an annual appropriation set apart by law for the gradual colonization of negroes and their descendants, who may be in the State at the adoption of this Constitution.

Sec. 4. After the year 1860, no negro or mulatto shall acquire real estate, or any interest therein, otherwise than by descent.

Sec. 5. The General Assembly shall pass laws to carry out the provisions of the foregoing sections of this article if adopted by the people.

Sec. 6. This article shall be submitted to a separate vote of the people in this form: "Exclusion and Colonization of negroes and mulattoes?" aye or no (p. 652). Section 1 was engrossed for third reading without amendment by a vote of 94-36 (p. 752). A proposed amendment, that "members of this convention be required, whenever they see a negro in the State, to catch him and take him out," was rejected by a vote of 15-114. Passed on January 24 by a vote of 93-40. Section 2 was engrossed for third reading without amendment by a vote of 77-56.

An amendment proposing to strike out the provision prescribing a fine for persons employing or otherwise encouraging negroes to remain in the State was rejected by a vote of 57-74. Any person, body politic, or corporate, who shall knowingly and willingly permit any negro or mulatto coming into this State contrary to the provisions of this Constitution to occupy any real estate belonging to such person, body politic, or corporate, shall forfeit the same to the county in which the same may be for the use of common schools. Rejected by a vote of 35-95 (p. 753). Passed on January 24 by a



Section 2. All contracts made with any Negro or Mulatto coming into the State, contrary to the provisions of the foregoing section, shall be void; and any person who shall employ such Negro or Mulatto, or otherwise encourage him to remain in the

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vote of 78-59 (p. 769). The following proposed amendment was rejected by a vote of 43-91: Provided, however, The sections of this article shall not be so construed that the citizens of each State shall not be entitled to all privileges and immunities of citizens in the several States. Section 3 was engrossed for third reading as follows:

Sec. 3. All fines which may be collected for a violation of any of the sections of this article, or of any law hereafter passed by the legislature, for the purpose of carrying out the provisions of this article, shall be appropriated and set apart for the colonization of such negroes and mulattoes as are now in this State and may be willing to emigrate (p. 756). Passed by a vote of 106-33 on January 24 (p. 772).

Proposed amendments: (1) and the net proceeds, after provision for drainage of the swamp lands belonging to the State of Indiana, or so much of the same as may be necessary, shall constitute a fund to be applied to the colonization of such negroes so desiring to leave the State; and the remainder, if any, of such net proceeds, shall be added to the common school fund of the State. Rejected by a vote of 41-93; (2) there shall be an annual appropriation set apart by law for the gradual colonization of negroes and mulattoes, and their descendants, who may be in this State at the adoption of this constitution. Rejected by a vote of 61-70. Fixing the appropriation at \$10,000 annually. Rejected by a vote of 28-99. Fixing the annual appropriation at \$2,000.

Section 4 was laid on the table on second reading by a vote of 77-54 (p. 758). Section 5 was advanced to engrossment as follows:

Sec. 5. The General Assembly shall pass laws to carry out the provisions of the foregoing sections of this article (p. 759). Passed on January 24 without vote (p. 776). An attempt to restore the phrase requiring submission to the people was rejected by a vote of 52-78. Section 6 was engrossed for third reading without amendment by a vote of 78-57. Passed on January 24 by a vote of 80-54 (p. 776). An attempt to lay the section on the table was lost by a vote of 58-73; (2) to strike out the word "colonization"; (3) "at the time of submitting the Constitution, to a separate vote of the people by ballot, in this form: 'Negro exclusion', or 'no exclusion', and unless a majority of all the votes given at said election shall be in favor of said 'exclusion', this article shall not become a part of the Constitution." Rejected by a vote of 44-87; (4) to provide that "if a majority of the legal voters shall vote aye, then this article shall be taken as a part of this Constitution." Reported by the Committee on Revision on February 7 and 8 so distributed as to constitute Sections 1, 2, 3 and 4 of Article 13 and Thirteenth of the Schedule of the Constitution as adopted (pp. 960, 978).

Amendments proposed and rejected: (1) prohibiting only those negroes and mulattoes hereafter coming into the State from purchasing or acquiring property; (2) prohibiting the enactment of laws designed "to prohibit any citizen of a State from enjoying the same privileges and immunities of the citizens of the several states"; (3) eliminating the provision requiring the enactment of laws prohibiting negroes and mulattoes from holding real estate, rejected by a vote of 39-76; (4) prohibiting only those negroes and mulattoes from holding real estate who have emigrated into the State since January 1, 1850; (5) requiring the legislature to pass discriminatory laws against negroes and mulattoes "whenever the public interest shall demand the same" instead of at the first session, rejected by a vote of 36-80; (6) to strike out the entire section; (7) that the general, great and essential principles of liberty and free government may be recognized and unalterably established, we declare, that all men are born equally free and independent, and have certain natural, inherent, and inalienable rights, among which are the enjoying and defending life and liberty, and of acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety; (8) authorizing the legislature to pass "such laws for the government of negroes and mulattoes as it may deem right and expedient;" (9) providing that any negro or mulatto now in the State may hold real property, rejected by a vote of 40-42.

Amendment proposed and considered but neither accepted nor rejected: (1) providing nothing herein contained shall be so construed as to prevent any negro or mulatto now residing in this State from holding or purchasing real property as heretofore.

State, shall be fined in any sum not less than ten dollars, nor more than five hundred dollars.

Section 3. All fines which may be collected for a violation of the provisions of this article, or of any law which may hereafter be passed for the purpose of carrying the same into execution, shall be set apart and appropriated for the colonization of such Negroes and Mulattoes, and their descendants, as may be in the State at the adoption of this Constitution, and may be willing to emigrate.

Section 4. The General Assembly shall pass laws to carry out the provisions of this article.

## ARTICLE 14.

### BOUNDARIES.

Section 1. In order that the boundaries of the State may be known and established, it is hereby ordained and declared, that the State of Indiana is bounded, on the East, by the meridian line which forms the western boundary of the State of Ohio; on the South, by the Ohio river, from the mouth of the Great Miami river to the mouth of the Wabash river; on the West, by a line drawn along the middle of the Wabash river, from its mouth to a point where a due north line, drawn from the town of Vincennes, would last touch the northwestern shore of said Wabash river; and, thence, by a due north line, until the same shall intersect an east and west line, drawn through a point ten miles north of the southern extreme of Lake Michigan; on the North, by said east and west line, until the same shall intersect the first mentioned meridian line, which forms the western boundary of the State of Ohio.

Section 2. The State of Indiana shall possess jurisdiction and sovereignty co-extensive with the boundaries declared in the preceding section; and shall have concurrent jurisdiction, in civil and criminal cases, with the State of Kentucky on the Ohio river, and with the State of Illinois on the Wabash river, so far as said rivers form the common boundary between this State and said States respectively.<sup>91</sup>

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91. Reported by a select committee on January 29, as follows:

Section 1. In order that the boundaries of the State of Indiana may be known and established, it is hereby ordained and declared, that the State of Indiana is bounded on the east by the meridian line which forms the western boundary of the State of Ohio; on the south by the Ohio river from the mouth of the Great Miami river to the mouth of the river Wabash; on the west by a line drawn along the middle of the Wabash from its mouth to a point where a due north line drawn from the town of Vincennes would last touch the northwest shore of said Wabash river, and from thence by a due north line until the same shall intersect an east and west line drawn through a point ten miles

## ARTICLE 15.

## MISCELLANEOUS.

Section 1. All officers, whose appointment is not otherwise provided for in this Constitution, shall be chosen in such manner as now is, or hereafter may be, prescribed by law.<sup>92</sup>

Section 2. When the duration of any office is not provided for by this Constitution, it may be declared by law; and, if not so declared, such office shall be held during the pleasure of the authority making the appointment. But the General Assembly shall not

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north of the southern extreme of Lake Michigan; on the north by said east and west line until the same shall intersect the first mentioned meridian line, which forms the western boundary of the State of Ohio.

Sec. 2. In order that the southern boundary of this State may be better known and established than is declared in the preceding section, it is hereby ordained and declared, that the boundary of this State upon the Ohio river extends to the centre of the Ohio river, and that Indiana has concurrent jurisdiction with the State of Kentucky on said river between the mouth of the Great Miami river and the mouth of the Wabash river, and that all the counties of this State bounded by the Ohio river, shall have and exercise such original and concurrent jurisdiction fronting said counties (p. 821). On second reading Section 2 was laid on the table; the following supplemental provision was adopted, and the article as amended was advanced to engrossment: The State of Indiana shall possess jurisdiction and sovereignty co-extensive with the boundaries as declared in the preceding section, and have concurrent jurisdiction in civil and criminal cases with the State of Kentucky on the Ohio river, and with the State of Illinois on the river Wabash, so far as said rivers form the common boundary between this State and said States respectively (p. 884).

Section 1 and the proposed additional section were passed without vote on February 4 (p. 899). Reported by the Committee on Revision on February 7 (p. 961). The following sections were reported by the Committee on Miscellaneous Provisions on January 28.

Section 1. In order that the boundaries of the State of Indiana may more certainly be known and established, it is hereby ordained and declared, that the following shall be and forever remain the boundaries of the said State, to-wit: bounded on the east by the meridian line which forms the western boundary of the State of Ohio; on the south by the Ohio river, from the mouth of the Great Miami river to the mouth of the river Wabash; on the west by a line drawn along the middle of the Wabash river, from its mouth to a point where a due north line drawn from the town of Vincennes would last touch the north-western shore of the said Wabash river, and from thence by a due north line until the same shall intersect an east and west line drawn through a point ten miles north of the southern extreme of lake Michigan; on the north by the said east and west line until the same shall intersect the first mentioned meridian line, which forms the western boundary of the State of Ohio.

Sec. 2. The State of Indiana shall possess jurisdiction and sovereignty co-extensive with the boundaries as declared in the preceding section, and have concurrent jurisdiction in civil and criminal cases with the State of Kentucky on the Ohio river, and with the State of Illinois on the river Wabash, so far as said rivers form the common boundary between this State and said States respectively (p. 811). Laid on the table on second reading (p. 864).

92. Reported by Committee on Salaries, Compensation and Tenure of Office on October 31, as follows:

Section 1. All officers shall be elected by the qualified electors of this State, except as is otherwise provided in this Constitution (p. 172). Laid on the table on second reading (p. 526). Reported in substantially similar form by the Committee on Revision on February 8 (p. 976).



create any office, the tenure of which shall be longer than four years.<sup>93</sup>

Section 3. Whenever it is provided in this Constitution, or in any law which may be hereafter passed, that any officer, other than a member of the General Assembly, shall hold his office for any given term, the same shall be construed to mean that such officer shall hold his office for such term, and until his successor shall have been elected and qualified.<sup>94</sup>

Section 4. Every person elected or appointed to any office under this Constitution, shall, before entering on the duties thereof, take an oath or affirmation, to support the Constitution of this State, and of the United States, and also an oath of office.<sup>95</sup>

Section 5. There shall be a Seal of State, kept by the Governor for official purposes, which shall be called the Seal of the State of Indiana.<sup>96</sup>

Section 6. All commissions shall issue in the name of the State,

93. Reported by Committee on Rights and Privileges on November 2, as follows:

Sec. 16. The legislature shall not create any office, the tenure of which shall be longer than five years (p. 188). Advanced to engrossment as follows:

Sec. 16. The legislature shall not create any office, the tenure of which shall be longer than four years (p. 582). Passed on January 2 without vote (p. 590). The following section was reported by the Committee on Miscellaneous Provisions on January 21.

Sec. 3. When the duration of any office is not provided for by this Constitution, it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment (p. 733). Engrossed without amendment (p. 848). Passed on January 31 without vote (p. 857). Reported by the Committee on Revision on February 1 and 8 and consolidated to constitute Section 2 of Article 15 of the constitution as adopted (pp. 870, 974).

Amendments proposed and rejected: (1) excepting the pilots of the Falls of the Ohio river, whose tenure of office shall be fixed by law; (2) to fix the constitutional term of office at three years; (3) to fix the constitutional term of office at six years. Rejected by a vote of 56-63; (4) to fix the constitutional term of office at two years.

94. Reported by Committee on Revision on February 8 (p. 976).

95. Reported by the Committee on Miscellaneous Provisions on January 21, as follows:

Sec. 5. Every person who shall be elected or appointed to any office under this Constitution, or any law made in pursuance thereof, shall, before entering upon the duties thereof, take an oath to support the Constitution of this State, and of the United States, and an oath of office (p. 733). Engrossed without amendment (p. 850). Passed without vote on January 31 (p. 859). The Committee on Revision was instructed to amend the sections so as to include affirmations as well as oaths (p. 878). Reported by the Committee on Revision on February 8 (p. 974).

96. Reported by Committee on the Executive Department on November 1, as follows:

Sec. 24. There shall be a seal of this State, which shall be kept by the Governor and used by him officially and shall be called "the Seal of the State of Indiana" (p. 180). Engrossed for third reading without amendment (p. 550). Passed on December 30 without vote (p. 563). Reported by the Committee on Revision on February 8 (p. 976).

shall be signed by the Governor, sealed with the State Seal, and attested by the Secretary of State.<sup>97</sup>

Section 7. No county shall be reduced to an area less than four hundred square miles; nor shall any county, under that area, be further reduced.<sup>98</sup>

97. Reported by Committee on the Executive Department on November 1, as follows:

Sec. 25. All commissions shall be in the name and by the authority of the State of Indiana, and sealed with the State seal and signed by the Governor, and attested by the Secretary of State (p. 180). Engrossed for third reading without amendment (p. 551). Passed on December 30, without vote (p. 563). Reported by the Committee on Revision on February 8 (p. 976).

98. Reported by Committee on County and Township Organization on October 29, as follows:

Sec. 4. The General Assembly shall reduce no county to a less content than four hundred square miles (p. 151). On the grounds that this resolution was anti-republican and a legislative matter, a minority of the committee dissented and submitted the following resolution: We would therefore most respectfully recommend to the Convention so to amend the report of the majority "That a majority of all the voters of the county or counties of which a proposed new county is to be made, must first be had before any new county can be made" (p. 151). Engrossed for third reading as follows:

Sec. 4. The General Assembly shall reduce no county to a less content than four hundred square miles, nor shall any county under four hundred square miles be reduced below its present area (pp. 317-18).

Recommitted on third reading by a vote of 67-49 with instructions to amend to read as follows:

Sec. 4. The General Assembly shall reduce no county to a less content than four hundred square miles nor shall any county under four hundred square miles be reduced below its present area, except in the following case, to-wit: where the voters of two or more counties are desirous of forming a new county and after laying off the same by metes and bounds, and giving their approbation to it by a vote of a clear majority of the votes of each county separately, in favor of it at some general election (p. 340).

Vote reconsidered the following day, by a vote of 65-61; the Convention refused to recommit the section with instructions by a vote of 45-86, and the section was passed by a vote of 91-37, in the form in which it had been engrossed for third reading, and was referred to the Committee on Revisions (p. 345). Reported by the Committee on Revision on February 10 (p. 984).

Amendments proposed and rejected: (1) authorizing the General Assembly to alter county boundaries whenever the public good may require it, rejected by 35-75; (2) fixing the area of new counties at 300 square miles or more; no county to be reduced to less than 400 square miles in forming new counties without the consent of a majority of the voters, rejected by 29-82; (3) prohibiting the reduction of the population of any county by division of territory below the representative ratio, rejected by 29-82; (4) prohibiting the creation of new counties with less than 300 square miles; (5) prohibiting the further reduction of any county having an area less than 400 square miles; (6) no county to contain over 400 square miles, the excess, on adjustment, to be attached to contiguous small counties; (7) no county to be reduced below 400 square miles in forming a new county, unless by a majority vote of the qualified electors, rejected by 29-73; (8) to strike out the entire section, rejected by 27-81; (9) prohibiting the reduction of an existing county below 300 square miles, or any new county below 200 square miles, and in all cases on petition of a majority of the legal voters; (10) prohibiting the reduction of any existing county except on petition of a majority of the legal voters, specifying the extent and purposes of the reduction; (11) to re-incorporate the provisions of the old Constitution; (12) authorizing the legislature to make such alterations in counties as may be demanded by public convenience.

Section 8. No lottery shall be authorized; nor shall the sale of lottery tickets be allowed.<sup>99</sup>

Section 9. The following grounds owned by the State in Indianapolis, namely: the State House Square, the Governor's Circle, and so much of out-lot numbered one hundred and forty-seven, as lies north of the arm of the Central Canal, shall not be sold or leased.<sup>1</sup>

Section 10. It shall be the duty of the General Assembly, to provide for the permanent enclosure and preservation of the Tippecanoe Battle Ground.<sup>2</sup>

## ARTICLE 16.

### AMENDMENTS.

Section 1. Any amendment or amendments to this Constitution, may be proposed in either branch of the General Assembly; and, if the same shall be agreed to by a majority of the members

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99. Proposed as an additional section by Mr. Helmer on December 23, adopted and advanced to engrossment.

Sec. 42. No laws authorizing or sanctioning the establishment of lotteries shall ever be passed (p. 516). Passed on December 24 without vote (p. 521). Reported by the Committee on Revision on February 8 (p. 979).

1. See Note 2.

2. Reported by the Committee on Public Institutions on January 31, as follows:

Section 1. It shall be the duty of the General Assembly to provide for the permanent enclosure and preservation of the Tippecanoe Battle Ground (p. 855). Engrossed as follows:

Section 1. It shall be the duty of the General Assembly to provide for the permanent enclosure and preservation of the Tippecanoe Battle Ground. The General Assembly shall have no power to sell, or otherwise dispose of the public grounds in Indianapolis, known as the Governor's Circle and State-House Square (p. 882). Re-committed to a select committee with instructions to amend as follows:

Section 1. It shall be the duty of the General Assembly to provide for the permanent enclosure and preservation of the Tippecanoe Battle Ground. The General Assembly shall have no power to sell, or otherwise dispose of the public grounds in Indianapolis, known as the Governor's Circle and State-House Square. The General Assembly shall not have power to pass any law to sell or divert from the use of the public, so much of the public ground now belonging to the State, in Out Lot numbered one hundred and forty-seven as lies north of the arm of the Central Canal, running east and west (p. 890). Reported back to the Convention amended as follows:

Section 1. It shall be the duty of the General Assembly to provide for the permanent enclosure and preservation of the Tippecanoe Battle Ground.

The General Assembly shall have no power to sell or otherwise dispose of the public grounds in Indianapolis, known as the Governor's Circle and State House Square.

Sec. 2. The General Assembly shall not have power to sell or dispose of the grounds now owned by the State, lying north of the arm of the northern division of the Central Canal and west of West street, in the city of Indianapolis, being part of Out Lot numbered one hundred and forty-seven (p. 898). Passed on February 4 without vote (p. 898).

The following proposed amendment was rejected: as that the legislature shall be authorized to sell the Governor's Circle, and also Lot 147, known as the Parade Ground, for the best price that can be obtained, and appropriate the proceeds to the use of common schools in the several counties in this State.



elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals, and referred to the General Assembly to be chosen at the next general election; and if, in the General Assembly so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such amendment or amendments to the electors of the State; and if a majority of said electors shall ratify the same, such amendment or amendments shall become a part of this Constitution.

Section 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner, that the electors shall vote for or against each of such amendments separately; and while an amendment or amendments, which shall have been agreed upon by one General Assembly, shall be awaiting the action of a succeeding General Assembly, or of the electors, no additional amendment or amendments shall be proposed.<sup>3</sup>

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3. Reported by the Committee on Future Amendments on January 16, as follows:

Section 1. Whenever two-thirds of all the members elected to each branch of the General Assembly shall think it necessary to call a Convention to alter or amend this Constitution, they shall recommend to the electors at the next election of members of the General Assembly, to vote for or against a Convention; and if it shall appear that a majority of all the electors of the State voting for representatives have voted for a Convention, the General Assembly shall, at its next session, call a Convention for the purpose of revising, altering or amending this Constitution.

Sec. 2. Any amendment or amendments to this Constitution may be proposed in either branch of the General Assembly, and if the same shall be agreed to by two-thirds of all the members elected in each of the two houses, such proposed amendment or amendments shall be referred to the next regular session of the General Assembly, and shall be published at least three months previous to the time of holding the next election for members of the House of Representatives; and if at the next regular session of the General Assembly after said election, a majority of all the members elected in each branch of the General Assembly shall agree to said amendment or amendments, then it shall be their duty to submit the same to the people at the next general election for their adoption or rejection in such manner as may be prescribed by law; and if a majority of all the electors voting at said election for members of the House of Representatives shall vote for such amendment or amendments, the same shall become a part of the Constitution. If two or more amendments be submitted at the same time, they shall be submitted in such manner that the people shall vote for or against each of such amendments separately, and while an amendment or amendments which has been agreed upon by one General Assembly is awaiting the action of a succeeding Assembly, or undergoing the final consideration of the people, no additional amendment or amendments shall be proposed (p. 693). Reported Section 1 was laid on the table on second reading by a vote of 66-55 (pp. 830-31). Reported Section 2 was engrossed as follows by a vote of 78-48.

Sec. 2. Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives; and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment or amendments shall be entered on their journals, with the ayes and noes taken thereon, and referred to the legislature to be chosen at the next general election, and if in the legislature so next chosen, such proposed amendment or amendments shall be agreed

to by a majority of all the members elected to each House, then it shall be the duty of the legislature to submit such amendment or amendments to the qualified electors of the State; and if a majority of said electors shall ratify the same, such amendment or amendments shall become a part of this Constitution (p. 832). Passed on January 30 by a vote of 77-45 (p. 839). The following additional section was proposed by Mr. Ritchey on January 30, adopted and ordered engrossed:

See. 5. If two or more amendments be submitted at the same time, they shall be submitted in such manner that the people shall vote for or against each of such amendments separately; and while an amendment or amendments which has been agreed upon by one General Assembly is awaiting the action of a succeeding General Assembly, or undergoing the final consideration of the people, no additional amendment or amendments shall be proposed (p. 841). Passed on January 31 by a vote of 100-24 (p. 856). Reported by the Committee on Revision on February 7 and concurred in (p. 975). Proposed as a substitute for reported Section 1 and laid on the table.

Section 1. Every sixteenth year after this Constitution shall have taken effect, at the general election, held for Governor, there shall be a poll opened in which the qualified electors of the State shall express by vote, whether they are in favor of calling a Convention or not; and if there should be a majority of all the votes given at such election, the Governor shall inform the next General Assembly thereof, whose duty it shall be to provide by law for the election of the members to the Convention, the number thereof, and the time and place of their meeting; and which Convention, when met, shall have it in their power to revise, amend or change the Constitution (p. 830). Proposed substitutes for reported Section 2:

The General Assembly may, at its first session after six years from the adoption of this Constitution, and every tenth year thereafter, by a vote of three-fifths of each branch thereof, recommend to the electors of this State, any alteration or amendment to this Constitution, and provide for submitting any such alteration or amendment to a vote of such electors, and if a majority of such electors shall vote in favor of such alteration or amendment then the same shall be adopted and form a part of this Constitution (p. 832). Rejected

See. —. No amendment shall be made to this Constitution, unless the same shall be called for and approved of by a majority of all the voters of this State. Rejected by a vote of 27-93 (p. 837). Proposed as a supplemental provision: And once in every twelve years after the adoption of this Constitution the General Assembly may pass an act for the call of a Convention, and if the next General Assembly shall, by a majority vote, adopt the said act, it shall then provide by law for the opening of a poll, in which the qualified electors of the State shall express by vote, whether they are in favor of calling a Convention or not, and if a majority of all the votes given at such election be in favor of calling a Convention, then such Convention shall be called, which Convention shall have the power to revise, amend, or change the Constitution; but no amendment shall be proposed or made, nor shall a Convention be called, otherwise than as in this article expressly provided. Rejected by a vote of 12-109 (p. 837). Proposed additional sections:

See. 3. It may be left to a vote of the people at any time after the year 1855, to change the meetings of the legislature, from biennial to annual sessions, in this form, "annual sessions," "yea" or "nay" and if a majority of the voters vote "yea," the sessions of the legislature shall thereafter be annual. Laid on the table (p. 831).

See. 4. This article shall be submitted to a separate vote of the people, and may be adopted independent of any other part of this Constitution; and in case the voters of Indiana shall, upon such separate vote, adopt this article and reject the remainder of this Constitution, then, and in that case, all the provisions of this article shall apply with full force in every particular, to the now existing Constitution of the State of Indiana, and the same may be thereafter amended as in this article provided for amending this Constitution. Laid on the table by a vote of 100-23 (pp. 833, 40).

See. 6. Every tenth year after the adoption of this Constitution, at the general election held therein, there shall be a poll opened in which the qualified electors of the State shall express by vote whether they are in favor of calling a Convention or not; and if there should be a majority of all the votes given at such election in favor of a Convention, the Governor shall inform the next General Assembly thereof, whose duty it shall be to provide by law for the election of the delegates to the Convention, the number thereof, which shall not exceed one from every senatorial district into which the State is at the time divided, and the time and place of their meeting, which Conven-



## SCHEDULE.

This Constitution, if adopted, shall take effect on the first day of November, in the year one thousand eight hundred and fifty one, and shall supersede the Constitution adopted in the year one thousand eight hundred and sixteen.<sup>4</sup> That no inconvenience may arise from the change in the government, it is hereby ordained as follows:

First. All laws now in force, and not inconsistent with this Constitution, shall remain in force, until they expire or be repealed.

Second. All indictments, prosecutions, suits, pleas, complaints, and other proceedings, pending in any of the courts, shall be prosecuted to final judgment and execution; and all appeals, writs of error, certiorari, and injunctions, shall be carried on in the several courts, in the same manner as is now provided by law.<sup>5</sup>

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tion, when met, shall have power to revise, amend, or change the Constitution. Laid on the table by a vote of 82-37 (p. 841).

Sec. 7. Whenever any amendment is made to this Constitution, in accordance to the provisions of this article, it shall be the duty of the General Assembly to order the whole Constitution as amended to be published with the statutes passed at the session when such amendment or amendments are adopted. Laid on the table (p. 842).

4. The following section was submitted by Mr. Bright on February 7.

3d. This Constitution, if adopted, shall go into effect on the first day of November, 1851 (p. 948). Read a second time and referred to a select committee of three; reported back without amendment; engrossed; passed, under suspension of the rules, by a vote of 83-25 (p. 951).

The following sections were reported by the Committee on Miscellaneous Provisions on February 1.

Section 1. The Constitution adopted in the year 1816 is hereby declared to be superseded by this Constitution.

Sec. 2. Local courts, established in any city, town, or county (including the courts of common pleas in the counties of Marion and Tippecanoe), shall continue with their present powers and jurisdiction, until otherwise directed by law (p. 866). Section 2 was laid on the table on second reading. Section 1 was engrossed without amendment (p. 891.) Passed without vote on February 4 (p. 899). Reported by the Committee on Revision on February 8, consolidated to constitute the first part of the introductory paragraph of the schedule as adopted (p. 977).

5. Reported by the Committee on Miscellaneous Provisions on January 21, as follows:

Section 1. That no inconvenience may arise from the change in the Constitution of this State, and in order to carry the same into complete operation, it is hereby declared and ordained, that,

Sec. 2. All laws and parts of laws now in force, and not inconsistent with this Constitution, shall continue and remain in full force until they expire or are repealed.

Sec. 4. All writs, actions, causes of actions, prosecutions, contracts, claims, and rights of individuals, bodies corporate, and of the State shall continue, and all indictments which shall have been found, or which may hereafter be found, for any crime or offence committed before the adoption of this Constitution, may be proceeded upon as if no change had taken place in the organic law of this State (p. 733). Engrossed



Third. All fines, penalties, and forfeitures, due or accruing to the State, or to any county therein, shall inure to the State, or to such county, in the manner prescribed by law. All bonds executed to the State, or to any officer, in his official capacity, shall remain in force and inure to the use of those concerned.<sup>6</sup>

Fourth. All acts of incorporation for municipal purposes shall continue in force under this Constitution, until such time as the General Assembly shall, in its discretion, modify or repeal the same.<sup>7</sup>

Fifth. The Governor, at the expiration of the present official term, shall continue to act, until his successor shall have been sworn into office.<sup>8</sup>

Sixth. There shall be a session of the General Assembly, commencing on the first Monday in December, in the year one thousand eight hundred and fifty-one.

Seventh. Senators now in office and holding over, under the existing Constitution, and such as may be elected at the next general election, and the Representatives then elected, shall continue in office until the first general election under this Constitution.

Eighth. The first general election under this Constitution, shall be held in the year one thousand eight hundred and fifty-two.

Ninth. The first election for Governor, Lieutenant Governor,

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without amendment (p. 850). Passed without vote on January 31 (p. 859). The following sections were reported by Mr. Bright on February 7.

First—That no inconvenience may arise from the change in the constitution of this State, it is hereby declared and ordained —

1st. All laws in force at the adoption of this Constitution, and not repugnant thereto, shall remain in full force until they expire by their own limitation, or are altered or repealed. And all suits, prosecutions, claims and rights now pending or existing, shall continue and may be proceeded upon as if no change had taken place. The several courts (except as herein otherwise provided) shall continue with the like power and jurisdiction as if this Constitution had not been adopted until otherwise provided (p. 948). Referred on second reading to a select committee of three; reported back without amendment; engrossed; passed, under suspension of the rules, by a vote of 83-25 (p. 951). Reported by the Committee on Revision on February 7, consolidated to constitute the latter part of the first paragraph, first and second of the schedule as finally adopted (p. 977).

The following proposed amendment to Section 2, was rejected:

Except acts of incorporation of companies that have been approved for five years or more under which there has been no organization, or acts of incorporation that have been forfeited or subject to forfeiture for non-user, or for violation of the same.

6. Supplied by the Committee on Revision and reported to the Convention on February 8, and concurred in (pp. 974, 980).

7. Proposed as an additional section by Mr. Holman on February 4.

Section 1. All acts of incorporation created for municipal purposes shall remain unaffected by the provisions of this Constitution until such time as the General Assembly shall, in their discretion, repeal the same (p. 898). Passed without vote, under suspension of the rules on February 5 (p. 917).

8. Reported by Committee on Revision on February 8 (p. 977).

Judges of the Supreme Court and Circuit Courts, Clerk of the Supreme Court, Prosecuting Attorneys, Secretary, Auditor and Treasurer of State, and State Superintendent of Public Instruction, under this Constitution, shall be held at the general election in the year one thousand eight hundred and fifty-two; and such of said officers as may be in office when this Constitution shall go into effect, shall continue in their respective offices, until their successors shall have been elected and qualified.<sup>9</sup>

Tenth. Every person elected by popular vote, and now in any office which is continued by this Constitution, and every person who shall be so elected to any such office before the taking effect of this Constitution (except as in this Constitution otherwise provided), shall continue in office, until the term for which such person has been, or may be, elected, shall expire: Provided, that no

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9. Reported on February 7, by Mr. Bright as follows:

2d. The first election for Governor, Lieutenant Governor, Judges of the Supreme and Circuit Courts, Clerk of the Supreme Court, Prosecuting Attorneys, Secretary, Treasurer, Auditor of State and State Superintendent of Public Instruction, under this Constitution, shall be held on the second Monday of October, 1852, and such of said officers as are or may be in office when this Constitution goes into effect, shall continue in their respective places until said second Monday of October, 1852, and until their successors are elected and qualified, unless superseded by law.

4th. Senators now in office and holding over under the existing organization, and such as may be elected at the next general election, and the representatives then elected, shall continue in office until the second Monday in October, 1852.

5th. There shall be a session of the General Assembly commencing on the first Monday of December, 1851.

6th. The first general election under this Constitution shall be held on the second Tuesday of October, 1852, and the first regular biennial session of the General Assembly shall be held in 1853, commencing on the Thursday after the first Monday of said year (p. 948). Referred on second reading, to a select committee of three; reported back without amendment; engrossed; passed, under suspension of the rules, by a vote of 83-25 (p. 951). Reported by the Committee on Revision on February 8 (p. 977).

Amendment proposed and rejected by a vote of 33-72. The first election of Governor and Lieutenant Governor, under this Constitution, shall be held on the second Tuesday in October, in the year eighteen hundred and fifty-one; and the persons chosen at said election, to said offices, shall enter upon the duties thereof on the second Monday in January, in the year eighteen hundred and fifty-two. (p. 950).

2d. Senators and representatives, who may be in office at the time of the adoption of this Constitution, shall hold their offices until and including the twenty-fifth day of October following, and no longer.

3d. The first election of senators and representatives pursuant to the provision of this Constitution, shall be held on the second Tuesday in October, in the year eighteen hundred and fifty-one.

4th. The first election of judges of the Supreme and Circuit Courts, Auditor, Treasurer, and Secretary of State, Prosecuting Attorneys, Clerks of the Supreme Court, and Superintendent of Common Schools, shall take place at the time of holding the first election of Governor as herein provided, and shall severally enter upon the discharge of the duties of their respective offices on the second Monday in January, in the year of our Lord eighteen hundred and fifty-two.

Members to Congress, State, and county officers when election would have taken place on the first Monday in August, in the year eighteen hundred and fifty-one, shall be elected at the time of holding general elections, as in this Constitution prescribed.

such person shall continue in office, after the taking effect of this Constitution, for a longer period than the term of such office in this Constitution prescribed.<sup>10</sup>

Eleventh. On the taking effect of this Constitution, all officers thereby continued in office, shall, before proceeding in the further discharge of their duties, take an oath or affirmation to support this Constitution.

Twelfth. All vacancies that may occur in existing offices, prior to the first general election under this Constitution, shall be filled in the manner now prescribed by law.<sup>11</sup>

Thirteenth. At the time of submitting this Constitution to the electors, for their approval or disapproval, the article numbered thirteen, in relation to Negroes and Mulattoes, shall be submitted as a distinct proposition, in the following form: "Exclusion and Colonization of Negroes and Mulattoes," "Aye" or "No." And if a majority of the votes cast shall be in favor of said article, then the same shall form a part of this Constitution; otherwise, it shall be void, and form no part thereof.<sup>12</sup>

Fourteenth. No Article or Section of this Constitution shall

10. Reported by the Committee on Miscellaneous Provisions on January 28, as follows:

Sec. 3. All officers, both civil and military, shall continue in the exercise of their respective offices until said officers are superseded under the authority of this Constitution.

Sec. 4. The present incumbents in the offices continued by this Constitution (and who were elected by the people), may exercise the duties of their respective offices until the expiration of the time for which they were elected: Provided, no incumbent shall continue in such office by virtue of this section for a longer period of time than the term of time prescribed by this Constitution, to such office (p. 811). Reported section 3 was engrossed without amendment (p. 864). Passed without vote on February 1 (p. 879). Reported Section 4 was engrossed as follows:

Sec. 4. The present incumbents in the offices continued by this Constitution (and who were elected by the people), may exercise the duties of their respective offices until the expiration of the time for which they were elected: Provided, That no incumbent, by virtue of such previous election shall continue in such office after the adoption of this Constitution for a longer period of time than the term prescribed by this Constitution (p. 865). Passed without vote on February 1 (p. 879). Reported by Committee on Revision on February 10, consolidated to constitute paragraph tenth of the schedule of the Constitution as adopted (p. 985).

11. Reported on February 7 by Mr. Bright as follows:

7th. All vacancies that may occur in the offices now existing prior to the first general election, shall be filled in the same manner as is now prescribed by law.

8th. On the taking effect of this Constitution, all officers then in office, shall before proceeding in the further discharge of their duties, take an oath to support this Constitution (p. 948).

Referred, on second reading, to a select committee of three; reported back without amendment; engrossed; passed, under suspension of the rules, by a vote of 83-25 (p. 951). Reported by the Committee on Revision on February 8 (p. 977).

12. See Note 90, p. 360.



be submitted as a distinct proposition, to a vote of the electors, otherwise than as herein provided.<sup>13</sup>

Fifteenth. Whenever a portion of the citizens of the counties of Perry and Spencer, shall deem it expedient to form, of the contiguous territory of said counties, a new county, it shall be the duty of those interested in the organization of such new county, to lay off the same, by proper metes and bounds, of equal portions as nearly as practicable, not to exceed one-third of the territory of each of said counties. The proposal to create such new county shall be submitted to the voters of said counties, at a general election, in such manner as shall be prescribed by law. And if a majority of all the votes given at said election, shall be in favor of the organization of said new county, it shall be the duty of the General Assembly to organize the same, out of the territory thus designated.<sup>14</sup>

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13. Reported on February 7, by Mr. Bright as follows:

9th. No articles or sections of this Constitution shall be submitted separately to a vote of the people otherwise than is in this Constitution provided (p. 948). Referred, on second reading, to a select committee of three; reported back without amendment; engrossed; passed, under the suspension of the rules, by a vote of 83-25 (p. 951). Reported by the Committee on Revision on February 8 (p. 978).

14. Reported by the Committee on Miscellaneous Provisions on January 21, as follows:

Section 1. That whenever a portion of the citizens of the counties of Perry and Spencer, shall deem it expedient to form a new county of the contiguous territory of said counties, it shall be the duty of those interested in the organization of said new county, to lay off by proper metes and bounds (of equal proportions as near as practicable of the territory of said counties), said proposed new county; which proposition shall be submitted to the voters of said counties, at a general election, in such manner as shall be prescribed by law. And if a majority of all the votes given at said election shall be given in favor of the organization of said new county, it shall be the duty of the legislature to organize a new county out of the territory thus designate (p. 732). Engrossed without amendment (p. 842). Recommitted on third reading with instructions to amend as follows:

Section 1. That whenever a portion of the citizens of the counties of Perry and Spencer, shall deem it expedient to form a new county of the contiguous territory of said counties, it shall be the duty of those interested in the organization of said new county, to lay off by proper metes and bounds, (of equal proportions as near as practicable of the territory of said counties), not exceeding one third part in extent of the territory of either of said counties, said proposed new county; which proposition shall be submitted to the voters of said counties, at a general election, in such manner as shall be prescribed by law. And if a majority of all the votes given at said election, shall be given in favor of the organization of said new county, it shall be the duty of the legislature to organize a new county out of the territory thus designated (p. 857). Reported back to the Convention on February 1, amended according to instructions and passed without vote (p. 876). Reported by the Committee on Revision on February 8 (p. 978).

Proposed amendments: (1) Strike out "the counties of Perry and Spencer" and insert "any two or more contiguous counties of this State." Proposed additional section.

Sec. 2. That whenever hereafter the citizens of any one or more of the counties of Dearborn, Ohio, Switzerland, Delaware, Grant and Blackford shall agree to have any line or lines, or a part of any line or lines of said counties, or of any one or more of said counties changed or altered, said citizens of any one or more of said counties may

Sixteenth. The General Assembly may alter or amend the charter of Clarksville, and make such regulations as may be necessary for carrying into effect the objects contemplated in granting the same; and the funds belonging to said town shall be applied, according to the intention of the grantor.<sup>15</sup>

Done in Convention, at Indianapolis, the tenth day of February, in the year of our Lord one thousand eight hundred and fifty-one; and of the Independence of the United States, the seventy-fifth.<sup>16</sup>

GEORGE WHITFIELD CARR,  
President, and Delegate from the  
County of Lawrence.

Attest:

WM. H. ENGLISH,

Principal Secretary.

GEORGE L. SITES,

HERMAN G. BARKWELL,

ROBERT M. EVANS.

} Assistant Secretaries.

Filed in the office of the secretary of state, at Indianapolis, on the twenty-fifth day of February, in the year of our Lord one thousand eight hundred and fifty one.

CHARLES H. TEST,  
Secretary of State.

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petition the legislature to make such change, and the legislature shall have power to make the same. But no such change shall be made unless petitioned for by a majority of the citizens of the county or counties to be affected by the change (p. 842). Amendment to the foregoing:

And if a majority of all the legal voters of Ohio and Dearborn counties should decide, by a joint vote at any annual election, to consolidate said counties, the same shall be so consolidated by the legislature at the next meeting of the same after the taking of said vote. Rejected together by a vote of 27-74 (p. 843).

15. Reported by a select committee to whom had been referred a resolution concerning the trustees of the town of Clarksville:

Section 1. The circuit court of Clark county is hereby vested with authority to appoint three persons as trustees of the town of Clarksville in said county, two of whom shall be residents of the county of Clark, one of whom shall reside within the limits of said town, and the third shall be a resident of Floyd county; who shall be vested with all necessary powers, and perform all the duties incident to said trust, under such restrictions and limitations as may be prescribed by law. All vacancies occurring in consequence of death, resignation, removal, or other disqualification of said trustees shall be, from time to time, filled by said court by appointment as above provided, and said trustees shall be subject to the supervision and control of said circuit court at all times.

Sec. 2. The General Assembly of this State are hereby vested with power to alter or amend the charter of the town of Clarksville, and to make all such rules and regulations as may be deemed necessary for carrying into effect the objects contemplated in granting the same; but nothing shall ever be done, which shall operate to divert the funds belonging to the same from their proper and legitimate use according to the original intention of the grantor (pp. 368, 394). Engrossed without amendment (p. 800). On third reading, reported Section 1 was laid on the table and reported Section 2 passed without vote (p. 815). Reported by the Committee on Revision on February 8 (p. 978).

16. Supplied by the Committee on Revision (p. 981).

**142. Constitutional Provisions Proposed, Considered and Rejected by the Convention.**

The following constitutional provisions were proposed by individual delegates or committees and after consideration by the Convention were rejected.

**(a) BANKS, CORPORATIONS AND FINANCE.**

1. Registry of Bank Notes.—Sec. 3. Some officer of the State shall register all bills or notes issued or put in circulation as money, and security shall be required for their redemption in specie, by stocks of the United States, of this State, or of other interest paying states at their market value, *and not above par* (p. 194). Reported by the committee on currency and banking on November 5. Laid on the table on second reading by a vote of 94-36 (p. 680).

2. Enactment of Bank Law, Registry of Issue and Collateral Security.—If the General Assembly shall enact a general banking law, such law shall provide for the registry and countersigning, by the Auditor of State, of all notes, designed to be circulated as money; and ample, readily convertible collateral security for the redemption of the same, in gold and silver, shall be required to the amount of dollar for dollar, which collateral security shall be under the control of the treasurer of state: *Provided, however,* That for the first twelve years after the adoption of this constitution, stocks of the State of Indiana, or of other solvent states, or of the United States, shall alone be received as such collateral security; to be, or to be made equal to stock bearing six per cent., and to be taken at their market value, but not above par (p. 680). Amendment proposed to the foregoing and rejected.

3. Supervisory Control of Banks.—Sec. —. The legislature shall provide, in the charter of any bank established under this article, a supervisory control of the same (p. 197). Submitted by a minority of the Committee on Currency and Banking on November 5.

4. Authorizing Establishment of Bank and Branches but Prohibiting State's being Partner Therein.—Sec.—. The legislature may authorize the establishment of a new State bank with branches to go into operation, after the expiration of the present bank charter, under such regulations as may be provided by law. But in no case shall the State be a partner, or have any interest therein, or in any branch except as may be occasioned by the



investment of any trust funds of the State therein as loans, and the safety of any funds so invested shall be secured by the preference in payment in case of insolvency, over the stocks of individuals in the bank (p. 194). Reported by a minority of the Committee on Currency and Banking on November 5. Laid on the table by a vote of 76-62 (p. 627).

Amendments proposed and rejected: (1) Prohibiting the legislature from establishing any banking corporation or continuing any existing banking corporation beyond the term of its present charter unless approved by a majority of the electors of the State. Rejected by a vote of 43-89. (2) Entirely prohibiting the establishment of any banking institution. Rejected by a vote of 43-89. (3) Prohibiting the establishment of a banking institution, except a state bank and branches, not exceeding one branch in each county, provided \$200,000 be subscribed by individuals, and authorizing the General Assembly to adopt the present bank and branches with proper instructions. Rejected by a vote of 57-75. (4) To strike out and insert:

The business of banking shall be free to all, on such terms and restrictions as the legislature shall impose in a general law for such purposes subject to the following restrictions:

1st. No banks shall directly or indirectly charge or receive any greater rate of interest than individuals shall be allowed to charge or receive.

2d. The bill or notes of all banks shall be registered by some proper officer of State, and ample security readily convertible into gold or silver, taken for the redemption of the same.

3d. The stockholders or owners shall be individually responsible for the debt of such bank.

4th. The billholders shall have preference in payment in case of failure.

5th. No law authorizing the suspension of specie payment shall be granted. Rejected by a vote of 18-107. (5) There may be incorporated by the General Assembly a state bank with branches, with such powers, rights, and liabilities as the General Assembly may think proper to bestow upon it, and the General Assembly may incorporate other banks from time to time with such powers, liabilities and restrictions as may be deemed proper; but the individual stockholders of such State bank, and the stockholders of all other banks, shall be individually liable for all the liabilities of such banks to the amount of their stock held at the time

such liability accrued. But no other corporation shall be a stockholder in any bank incorporated under this article.

(6) Section 1. The General Assembly shall have no power to pass any act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws.

Sec. 2. The General Assembly shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payment by any person, association, or corporation, issuing bank notes of any description.

Sec. 3. The General Assembly shall provide by law for the registry of all bills or notes issued or put into circulation as money, and shall require ample security for the redemption of the same in specie.

Sec. 4. The stockholders in every corporation and joint stock association for banking purposes, issuing bank notes or any kind of paper credits to circulate as money, shall be individually responsible for all its debts and liabilities of every kind and description.

Sec. 5. In case of the insolvency of any bank or banking association, the bill-holders thereof shall be entitled to preference in payment over all other creditors of such bank or association.

Sec. 6. No bank or banking association shall, directly or indirectly charge or receive any greater rate of interest than individuals shall be allowed to charge or receive.

Sec. 7. The General Assembly may also, at the time it passes a general banking law, impose such other and further restrictions and regulations as they may deem expedient and proper for the security of the billholders; *Provided*, That no such law providing for a general system of banking shall have any force or effect until the same shall have been submitted to a vote of the electors of the State at some general election, and been approved of by a majority of all the votes cast at such election. Rejected by a vote of 28-94. (7) Strike out all after the word "the" in the first line, and insert the following: legislature shall have no power to pass any act granting any special charter for banking purposes, but corporations or associations may be formed for such purposes under general laws.

The legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payment by any person, association, or corporation issuing bank notes of any description.

The legislature shall provide by law for the registry of all

bills or notes issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

The stockholders in every corporation and joint stock association for banking purposes, issuing bank notes of any kind of paper credits to circulate as money after the first day of January, 1852, shall be individually responsible to the amount of their respective shares of stock in any such corporation or association for all its debts and liabilities of every kind contracted after the said first day of January, 1852.

In cases of the insolvency of any bank or banking association, the billholders thereof shall be entitled to preference in payment over all other creditors of such bank or association. Rejected by a vote of 27-103. (8) Mr. Owen moved to strike out the section under consideration, and insert the following:

Section 1. The General Assembly shall not have power to establish or incorporate any bank or banking company, or moneyed institution, for the purpose of issuing bills of credit or bills payable to order or bearer, except under the following restrictions:

1st. The State shall not be a stockholder in any bank after the expiration of the charter of the State Bank.

2d. No bank bill or note shall issue for circulation until it shall first have been registered and countersigned by the Auditor of State, nor until there shall have been deposited as security for the redemption of the same, dollar for dollar, stocks of the United States, or of such States of this Union as may be designated by law, to be estimated at their market value, in the city of New York, but not above par: *Provided*, That such stocks be, or are made to be equal to stock producing six per cent per annum.

3d. No law shall pass sanctioning, directly or indirectly, the suspension by any bank or banking institution, of specie payments.

4th. Billholders shall have preference of payment over all other creditors in cases of insolvency.

5th. Stockholders shall be individually liable to an amount not less than that of their respective shares of stock.

6th. No bank shall receive, directly or indirectly, a greater rate of interest than shall be allowed by law to be received by individuals loaning money.

7th. No bank or banking institution shall have exclusive privileges not granted to other similar institutions; nor shall any such institution be created by special charter.

8th. The General Assembly shall have the right to alter, from



time to time, or to repeal all laws that may be passed creating banks or banking institutions. Rejected by a vote of 46-91. (9) The following additional section was proposed and rejected by a vote of 47-90:

Sec. 7. The Legislature shall not have power to grant special charters for banking purposes, but may pass a general law, making the business of banking free to all, based on the principles of ample stock security for circulation, registry of notes by some State officer, preference in payment to bill-holders in case of failure, and individual responsibility of stockholders to an amount equal to their stock: *Provided, however,* That at the expiration of the charter of the present State bank, the legislature may, in addition to such general system, grant a charter for a bank and branches. But the State shall not be a partner, directly or indirectly, in any such banking institution; and if the trust funds, or any portion of them should be invested therein as a loan, their safety shall be guaranteed by the State. Stockholders in any such bank shall be individually responsible to the same extent as those acting under the general law (p. 628). (10) An amendment was proposed as follows as an addition to the foregoing, and rejected by default of the original amendment: The banks chartered under the provisions of this article, shall be mutually liable for the redemption of the circulation of each other to the amount, and in the manner to be prescribed by law, and no bank hereby contemplated, or allowed to exist in this State, shall ever be allowed to issue for circulation any note or bill of a less denomination than ten dollars, or circulate or pay out at its counter, or at any other as payment on bank account, any note or bill of any bank of a less denomination than ten dollars. (11) Sec. —. There may be established or incorporated in this State a State bank and branches, in any or each county in said State, when a specie capital is furnished for said branches, as may be prescribed by law. Rejected by a vote of 62-72. (12) The following proposed as an amendment to the foregoing was rejected: The State shall not be a stockholder in any bank, after the expiration of the charter of the State bank of Indiana; nor shall the State lend its credit for the purpose of aiding in the establishment of any bank or moneyed incorporation whatever.

5. Prohibiting the State's being a Stockholder in the Future in any Bank—

Sec. —. The legislature shall not have power to create, authorize or incorporate, by any general or special law, any bank or

banking power or privilege, or any institution or corporation, having any banking power or privilege whatever, except as provided in this article.

Sec. —. The legislature may submit to the voters, at any general election, the question of “bank or no bank,” and if at any such election, a number of votes, equal to a majority of all the votes cast at such election on that subject shall be in favor of banks, then the legislature shall have power to grant bank charters, or to pass a general banking law, with such restrictions and under such regulations, as they may deem expedient and proper for the security of the billholders: *Provided*, That no such grant or law shall have any force or effect, until the same shall have been submitted to a vote of the electors of the State at some general election, and been approved by a majority of the votes cast on that subject, at such election (p. 195). Report submitted by a minority of the Committee on Currency and Banking on November 5.

6. Prohibiting Suspension of Specie Payments.—Sec. —. The legislature shall not have power to grant or approve of a suspension of specie payment by any bank or branch established under this article (p. 196). Report submitted by a minority of the Committee on Currency and Banking on November 5.

7. Authorizing State to Establish Bank and Branches.—Sec. 10. The General Assembly shall have power to establish a State bank and branches, with such powers, and under such restrictions as may be prescribed by law (p. 654). Rejected by a vote of 48-93.

8. Referendum on Establishment of Bank.—The legislature shall not have power to create, authorize, or incorporate, by any general or special law, any bank or banking power or privilege, or any institutions or corporations having any banking power or privilege whatever, except under the following conditions to-wit: The legislature may submit to the voters at any general election the question of “bank,” or “no bank;” and if at any such election a number of votes equal to a majority of all the votes cast at such election on that subject shall be in favor of banks, then the legislature shall have power to grant bank charters, or to pass a general banking law, with such restrictions and under such regulations as they may deem expedient and proper for the security of the bill holders: *Provided*, That no such grant or law shall have any force or effect until the same shall have been submitted to a vote of the electors of the State at some general election, and been

approved by a majority of the votes cast on that subject at such election (p. 640). Rejected.

9. Unlimited Number of Partners or Branches.—And such banks shall be compelled to accept of as many partners or branches as shall offer to comply with the provisions organizing the first, at such places in this State as such partners shall desire to engage in the business of banking (p. 657). Rejected.

10. Mutual Liability of Banks.—Sec. 10. All banks established under the provisions of this article shall be mutually liable for the redemption of the circulation of each other.

The stockholders shall be individually liable in their private estate to the full amount of their stock, whether paid in or unpaid, for all liabilities of the bank or banks in which such stock is held, and from the date of the failure of such bank, the individual liability shall attach and operate as a lien upon the real and personal estates of such stockholder.

A suspension of specie payments shall be a forfeiture of the charter of any bank, and no law shall be made suspending or legalizing a suspension of specie payments.

No bank shall issue, circulate, or pay out any bill or bank note of a less denomination than five dollars.

No bank shall be allowed to take or receive, directly or indirectly, more interest than private individuals are allowed by law.

Every bank dividing six per cent profit on stock paid in, shall pay over as may be provided by law, the half of one per cent for common school purposes, and one per cent for common school purposes when the bank profits shall amount to ten per cent per annum.

In payment of debts the note holders shall be first paid in case of a bank failure (p. 640.)

11. Removal and Negotiation of Loans.—The General Assembly may provide by law for the removal of the present loan invested in State bank stock, or may provide for and negotiate loans of money to be applied as stock on behalf of the State in any bank hereafter incorporated (p. 657). Rejected by a vote of 52-91.

12. Prohibiting Incorporation of Banks.—There shall not be established or incorporated in this State any bank or banking company, or moneyed institution, for the purpose of issuing bills of credit or bills payable to order or bearer (p. 658).

13. Prohibiting Foreign Interests in Banks.—Sec. 11. No person being a citizen of a foreign government shall be a stockholder in any bank, banking company, or association; nor shall such per-



son subscribe stock in any such bank, banking company, or association in the name of any citizen of the United States, nor shall stock be subscribed in such bank, banking company, or association to or for the use of any foreign subject or corporation. All stock subscribed in contravention to this section shall revert to the State for the use of common schools. . . .

Every bank established under the authority of this Constitution shall pay one quarter of one per cent per annum bonus on the capital stock to the State for common school purposes, and each bank dividing ten per cent or over profit on the capital stock established as aforesaid, shall, in like manner, pay over to the State for the use of common schools, the half of one per cent on the capital stock of such bank (pp. 662, 669). Rejected by a vote of 67-78.

14. Restricted Establishment of Bank and Branches.—The General Assembly may authorize the establishment of a State bank, with a suitable number of branches, to go into operation after the expiration of the charter of the present State bank, under such regulations as may be provided by law; but in no case shall the State be a partner, or have any interest therein, or any branch thereof, except as may be occasioned by the investment of any trust funds of the State therein as a loan; and the safety of any funds so invested, shall be secured by their preference in payment, in case of insolvency, over the stocks of any individuals in such banks; *Provided, however,* That each branch shall be held responsible for the debts and liabilities of each other (p. 666). Rejected by a vote of 63-80.

15. Taxation of Bank Stock.—Sec. 15. All bank stock and bank property real and personal, shall be taxed at the same rate as other property in this State is taxed (p. 685). Laid on the table.

16. Fixing Denomination of Bank Notes.—Sec. 16. No note or bill shall be issued or put in circulation of a denomination less than five dollars, and after 1860 less than ten dollars; and the legislature shall reserve the right after 1870 to prohibit the issue of any bill or note of a less denomination than twenty dollars (p. 685). Laid on the table by a vote of 78-42.

17. Contribution of Banks to Common School Fund.—Sec. 17. In all cases where the General Assembly shall grant any bank charter or corporation with power to issue bills of credit, or bills payable to order or bearer, they shall require at least one-half per cent per annum on the capital stock, which shall be applied to the

benefit of common schools (p. 686). Laid on the table by a vote of 68-51.

18. Alteration of Banking Laws and Equitable Establishment of Banks and Branches.—Sec. —. The legislature shall have the right to alter or amend any law authorizing or incorporating banks, and any bank having branches shall not prohibit additional branches from being established upon equitable conditions (p. 686). Laid on the table.

19. Limitation of Issue in Proportion to Specie.—Section —. Any bank or branches established under the provisions of this Constitution, shall never be permitted to issue more than two dollars for every one of specie they have in their vaults (p. 687). Laid on the table.

20. Referendum on Incorporation Acts and Acts Authorizing Issue of Bank Notes.—Sec. —. No special act of incorporation or general law authorizing the issuing of notes or bills to circulate as money shall ever take effect until the same shall have been submitted to the people at a general election, and shall have received the approval of a majority of the voters at such election (p. 687). Laid on the table by a vote of 76-52.

21. Security for Trust Funds.—Sec. 12. The trust funds, if loaned to any bank, shall be secured by priority of payment over all claims for stock, or other claims of whatsoever nature. The charter of the present State bank shall not be renewed or extended (pp. 681-82). Rejected by a vote of 64-66.

22. Bank Issue on Security of Real Estate Mortgages.—Sec. 13. Mortgages upon real estate shall not be taken as a basis for the issues of any bank or banking association (p. 682).

23. Referendum on Borrowing Money to Establish State Bank and Branches.—Section 1. That hereafter whenever the people of this State, may at any general election, decide that the General Assembly shall borrow money upon the faith of the State, for the purpose of establishing a State bank and branches, and the Legislature shall pass a law for that purpose, stating therein the amount to be borrowed, the interest to be paid, the amount of taxation necessary to pay the interest on the debt, which law shall be submitted to the people for their confirmation or rejection, at a regular election; and if said vote shall be in favor of said law then the State shall have the right to make such loan, anything in this Constitution to the contrary notwithstanding, and the interest on said loan, shall, as far as practicable, be paid out of the profits of said Bank (p. 881). Rejected by a vote of 39-72.

24. Authorizing State to Become Stockholder in State Bank.—Sec. 2. The State of Indiana shall have the right to become a stockholder in a State bank and branches which said branches shall be established from time to time, as the commercial, agricultural, manufacturing, and industrial interests shall demand; which said stock on the part of the State, may be equal to one-half of any such bank or branch (p. 881). Rejected by a vote of 39-72.

25. Taxation of Railroad, Plankroad and Turnpike Companies.—Sec. 1. The capital stock of all rail, plank, and turnpike (and moneyed) companies, upon which a profit may be derived, shall be subject to the like State and county tax as property of individuals; the county tax shall be equal to the State tax, which tax shall be assessed and collected as may be prescribed by law, all of which shall be paid into the State Treasury.

Sec. 2. The amount of all county tax upon such capital stock shall be appropriated to the several counties of this State for the benefit of common schools (p. 875). Reported by the Committee on Miscellaneous Provisions on February 1. Referred on second reading to a select committee of three with the following pending amendments: (1) The capital stock of all railroad, plankroad, turnpike, and moneyed corporations, upon which a profit may be derived shall be subject to the like state and county tax, as the property of individuals; said roads to be taxed in the counties through which the same may pass. (2) To strike out the words “upon which a profit may be derived.” Reported back to the Convention as follows:

Sec. 1. All corporation stocks owned or held in this State by persons residing out of the State shall be liable to a county tax equal to the tax levied for State purposes, which shall be paid into the State Treasury and distributed to the several counties in this State for common school purposes. And all corporation stocks owned or held by citizens of this State shall be taxable for county purposes as other property is taxed, and applied in the same manner in the counties where the same is owned or held, which shall in either case be in full for all taxes for county purposes. And the General Assembly shall pass all necessary laws to carry into effect the provisions of this section (p. 921).

The following amendment was proposed and both section and amendment were laid on the table (p. 921).

The stock or property of all incorporated companies in this State, whether held by residents or non-residents, shall be subject



to the like taxation for State and county purposes, as the property of individuals, and shall be assessed and collected in such manner as may be prescribed by law (p. 921).

26. Rendering All Subsequent Corporation Charters Repealable.—Sec. 6. That all charters hereafter created shall be subject to repeal; but the rights of all persons interested, shall be justly protected when any charter is repealed (p. 847). Adopted by a vote of 76-44 and ordered engrossed. Laid on the table on third reading by a vote of 67-71, with the following pending amendment (p. 858): Sec. 6. That all corporations hereafter created, either by special charter or under general laws, shall be subject to repeal by a vote of two-thirds of the members elect to each branch of the General Assembly; but the rights of all persons interested shall be justly protected, in case of such repeal. A proposed amendment that all charters be subject to repeal by a two-thirds vote of the General Assembly was rejected.

27. Limiting Lives of Future Corporations.—Sec. 7. No private corporation hereafter created shall endure for a longer period than thirty years (p. 848). Rejected.

28. Consolidation and Investment of Common School Fund.—Sec. 3. The General Assembly shall have power to consolidate and invest in the bonds of this State or otherwise the entire common school fund; and in case of such consolidation interest thereon at the rate of six per cent shall be invariably appropriated from the annually accruing revenues to the same specific purposes to which said funds are applied under this Constitution (p. 884). Laid on the table.

29. Application of Bank Profits to Maintenance of Common Schools.—Sec. 3. The legislature shall have power in a general banking law passed under the provisions of this Constitution, to extend the termination of the charter of the present State bank for five years, and the net profits of the State during such extension shall be applied to the common school fund. *Provided*, The stock and property of said bank shall be taxed as other property in this State is taxed (p. 885). Rejected by a vote of 61-67.

30. Extension of Bank Charter till 1863.—Sec. 3. The General Assembly may extend the charter of the present State bank until the year 1863; but if such charter shall be so extended, the General Assembly shall never charter any bank with branches as provided in Article — Section — of this Constitution (p. 886).

31. Extension of Bank Charter for Five Years.—The legisla-

ture shall at its first session under this Constitution pass a general banking law, in which law they may extend the termination of the charter of the present State bank for five years (p. 886).

32. Legislative Restrictions on Banking.—Sec. 20. The business of banking shall be free to all on such terms and under such restrictions as the legislature shall impose (p. 587). Laid on the table.

33. Compulsory Contributions by Corporations to Common School Fund.—Sec. 5. There shall be annually deducted, and paid over to the treasurer of State for the use of common schools, from the dividends of each company which may hereafter be incorporated, and of each company which has been heretofore incorporated, in whose charter the General Assembly has reserved the right to repeal, alter or amend the same, — per cent of such dividend, wherever the same shall exceed the amount of six per centum per annum (p. 408). Reported by the Committee on Education on Dec. 11. Laid on the table on second reading. (p. 808).

34. Prohibiting Perpetuities and Monopolies.—Sec. —. Perpetuities and monopolies are contrary to the spirit of a free State, and ought not to be allowed (p. 353). Rejected.

(b) PROPERTY RIGHTS OF WOMEN.

1. Property Rights of Married Women.—Section 1. The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale, for the payment of any debt or liability hereafter contracted. (The above section to follow that on the subject of imprisonment for debt.)

Sec. 2. Women hereafter married in this State shall have the right to acquire and possess property to their sole use and disposal: and laws shall be passed securing to them, under equitable conditions, all property, real and personal, whether owned by them before marriage, or acquired afterwards, by purchase, gift, devise, descent, or in any other way, and also providing for the registration of the wife's separate property.

Sec. 3. Laws shall be passed securing to women now married, the right to all property hereafter to be acquired by them, in every case in which such married women, in conjunction with their husbands, shall file for record, in the recorder's office of the county in which they reside, a declaration, duly attested, expressing the desire of the parties to come under the provision of such law

(p. 148). Reported by the Committee on Rights and Privileges on Oct. 29.

Amendments proposed: (1) To consolidate sections 1 and 2 as follows: Sec. ——. Every married woman shall have the right to the exclusive use and benefit of all real estate, and every interest therein of which she may be seized or possessed at the time of the marriage, or of which she may become seized or possessed at any time during the coverture by devise, or descent, or in any manner other than by gift from her husband in fraud of third persons; and laws shall be passed effectually securing to the wife on equitable principles, the use, issues and profits of her separate property, and a just interest in her husband's estate, in the event of the dissolution of the marriage contract by the death of the husband or otherwise (p. 249). Rejected. (2) Supplemental: No law shall ever be passed whereby the property owned by a *feme covert* at the time of her intermarriage or by her acquired subsequent thereto, either by inheritance, gift, grant, devise or otherwise, shall ever be taken for the debts of the husband contracted before or after the marriage (p. 250). Rejected.

Section —. Laws shall be passed securing to women, under equitable conditions, all property, real and personal, whether owned by them before marriage, or acquired afterward by purchase, gift, devise, or descent (p. 257). Rejected.

Section 3 was advanced to engrossment in the following form:

Sec. 3. The real and personal property of women, whether owned before marriage or afterwards acquired by purchase or gift, other than from the husband in fraud of his creditors, devise, or descent, shall be and remain secured to them under equitable conditions by law (p. 300).

Read a third time on Nov. 27 and passed by a vote of 66-59 (p. 307.) On Dec. 16, the vote on the passage of section 3 was reconsidered by a vote of 84-43, and the section failed to pass by a vote of 54-75 (p. 451).

Amendments proposed to Section 3 and rejected: (1) Succession of wife to life estate in real and personal property on husband's death. (2) Providing that the husband shall not be liable for the wife's debts. (3) The property, real and personal, of women shall be secured against the creditors and legal representatives of their husbands. Rejected by a vote of 35-93. (4) The real and personal property of married women shall be and remain secured to them on equitable conditions by law. Rejected by a vote of 60-69.



## 2. Property Rights secured to Married Women and Widows.—

Sec. 1. The real and personal property of married women, and a liberal provision for widows, shall be and remain secured to them respectively under equitable conditions by law (p. 692). Reported on January 16, by the Committee on Rights and Privileges. Advanced to engrossment by a vote of 70-58 (p. 811). Laid on the table on third reading by a vote of 74-59 (p. 821). Subsequently taken from the table by a vote of 83-45, and recommitted to a committee of one to amend as follows:

Sec. 1. Laws shall be passed for the security of the property of married women, of widows, and of orphans (p. 894).

The committee reported as instructed and the section passed by a vote of 71-61 (p. 896). Subsequently, by a vote of 65-61, the vote on passage was reconsidered and the section failed to pass by a vote of 63-68 (p. 905).

The following proposed amendment was rejected: But no law shall ever be passed, in any manner impairing the unity and sacredness of the marriage relation (p. 896).

### (c) HOMESTEADS.

1. Exemption of Homesteads and Other Accessories.—Section 1. The homestead owned by any person, the head of a family in this State, to consist of land or town property not less in value than \$500, shall be exempted from seizure and sale by any legal process whatever, for any debt contracted after the adoption of this Constitution: *Provided*, that such exemption shall not affect, in any manner, any mechanic's lien, or any mortgage thereon lawfully obtained; but such mortgage or other alienation of land by the owner thereof, if a married man, shall not be valid without the signature of his wife.

Sec. 2. The legislature shall, in addition to the present exemption of personal property, add to it, in the case of those persons who are not land holders, such additional amount in value of mechanics' tools, farming utensils, and other personal property, necessary to the business or support of such persons as the said legislature may deem expedient and equitable.

Sec. 3. The legislature shall pass such laws as are necessary to carry into effect all the provisions of this article (p. 197). Reported by a select committee on Nov. 5. Laid on the table on second reading by a vote of 79-36 (p. 702). This same provision was rejected a second time by a vote of 28-84 (p. 284).

## (d) THE JUDICIARY AND LEGAL PROCEDURE.

1. Election of Attorney General.—Sec. 1. There shall be elected by the qualified electors of the State, an Attorney General, whose powers and duties shall be prescribed by law, and who shall hold his office for four years, and until his successor be elected and qualified (p. 209). Reported by the Committee on Organization of Courts on Nov. 7. Laid on the table; subsequently taken up for consideration and finally laid on the table (pp. 719-22, 749). A proposal that the attorney-general be appointed by the Governor by and with the advice and consent of the Senate was rejected.

2. Classification of Judges of Supreme Court.—Section 3. Provision shall be made by law for classifying the Judges of the Supreme Court, so that not more than one of them shall go out of office in the same year (p. 722).

3. Method of Answering a Criminal Charge.—That no person arrested or confined in jail shall be treated with unnecessary rigor, or be put to answer any criminal charge but by presentment or indictment (p. 353). Rejected.

4. Salaries of Supreme and Circuit Judges.—Sec. 3. The salaries of the Judges of the Supreme Court, and the Judges of the Circuit Court, shall be one thousand dollars each, until the same shall be changed by the General Assembly (p. 881). Rejected by a vote of 39-72.

5. Supreme Court Districts.—For the purpose of providing for the election of Supreme Judges of the State, under this Constitution, at as early a day as practicable, the following shall compose the districts for Judges of the Supreme Court, to-wit:

Section —. The counties of Posey, Vanderburgh, Gibson, Pike, Warrick, Perry, Spencer, Dubois, Orange, Crawford, Harrison, Floyd, Washington, Clark, Scott, Jefferson, Switzerland, Ohio, Dearborn, Ripley, Jennings, Bartholomew, Jackson, Brown, Monroe, Lawrence, Martin, Daviess, Knox and Green, shall compose the first district.

The counties of Sullivan, Vigo, Clay, Owen, Morgan, Johnson, Shelby, Decatur, Rush, Fayette, Union, Franklin, Wayne, Henry, Hancock, Marion, Hendricks, Putnam, Parke, Vermillion, Boone, Hamilton, Madison, and Randolph shall compose the second district.

The counties of Delaware, Fountain, Montgomery, Warren, Tippecanoe, Clinton, Tipton, Benton, White, Carroll, Cass, Mi-

ami, Howard, Grant, Wabash, Huntington, Blackford, Jay, Wells, Adams, Allen, Whitley, Kosciusko, Fulton, Pulaski, Marshall, Starke, Jasper, Lake, Porter, Laporte, St. Joseph, Elkhart, Lagrange, Noble, Steuben, and DeKalb, shall compose the third district of the State of Indiana, which said districts shall be and remain as herein established until the same shall be altered or changed by law. But no change of any one or more of said districts shall prevent an incumbent in the office of Supreme Judge under this Constitution from holding said office to the end of the term for which he shall have been chosen (p. 876). Reported by the Committee on Miscellaneous Provisions on Feb. 1. Laid on the table (p. 917).

6. County Probate Judges.—Sec. 14. There shall be in each county a court to be composed of one judge, who shall have original jurisdiction in cases of probate, and such other jurisdiction as may be conferred by law, and whose salary shall be five hundred dollars, to be paid out of the county treasury, and such fees as may be prescribed by law (p. 709). Laid on the table.

7. County Court.—Sec. 14. There shall be a County Court in each county of this State, to be composed of one judge, to be elected by the electors of the county, who shall hold his office for four years, and whose jurisdiction and duties shall be fixed by law (p. 715). Rejected by a vote of 40-75.

8. Jurisdiction of Probate and Circuit Courts.—Sec. 15. The probate court shall have such civil jurisdiction, and the circuit court such criminal and civil jurisdiction as shall be prescribed by law (p. 709). Laid on the table.

(e) SCHOOLS AND THE MEANS OF EDUCATION.

1. Establishment of Normal Training School at University.—Sec. 2. It shall also be the duty of the General Assembly, in order to furnish the common schools of the State with efficient and well qualified teachers, to establish in the State University a normal school, wherein students shall be admitted upon such conditions and instructed in such subjects as shall be prescribed by law (p. 408). Reported by the Committee on Education on Dec. 11. Laid on the table (p. 803).

2. Ingredients of University Fund.—Sec. 3. The university fund shall consist of the proceeds from the sales of the lands, granted by the United States for a seminary of learning, and of such of said lands as remain unsold, together with such grants, gifts and donations, as have been, or may hereafter be made there-



to. The principal of said fund shall forever remain inviolate, and the interest and income thereof shall be applied to the maintenance of the State University, in such manner as the General Assembly may direct (pp. 708, 804). Reported by Committee on Education on Dec. 11. Amended and laid on the table by a vote of 62-61.

3. Disposition of County Seminary Funds.—Section —. The proceeds of the sale of no county seminary shall be applied to the purposes of common schools, until all existing liabilities against said seminary shall be first paid (p. 851). Laid on the table

4. Distribution of University Fund Among Colleges of State.—Section —. The interest arising from the university fund, shall be divided annually among the several incorporated colleges in this State, in proportion to the number of students in each of said colleges during the year (p. 734). A select committee appointed to inquire into the expediency of dividing the university fund among the several colleges of the state made a divided report. A majority of the committee recommended the indefinite postponement of the proposition. Mr. Borden proposed the section given above.

(f) COMPENSATION OF PUBLIC OFFICIALS.

1. Compensation of State Officers.—The following officers of government shall be allowed as their annual salaries not less than the following sums, viz.:

The Governor one thousand five hundred dollars.

The Secretary, Auditor, and Treasurer of State, one thousand dollars each, with such perquisites as the legislature shall from time to time allow.

The Judges of the Supreme Court, one thousand five hundred dollars each.

The Judges of the Circuit Courts, one thousand two hundred dollars each.

The members of the General Assembly three dollars per day each, and three dollars for every twenty-five miles travel on the most direct route in going to and returning from the seat of government. No law shall be passed to increase the pay of members of the General Assembly until after the close of the session at which such law shall be passed (p. 751). Reported by the Committee on Salaries on January 23. Laid on the table by a vote of 48-73 (p. 850). A subsequent attempt to take this article from the table failed by a vote of 48-68 (p. 859).

2. Compensation and Mileage of Members of General Assembly.

—The members of the first session of the General Assembly under this Constitution, shall receive three dollars each, per day for their services, and three dollars for every twenty miles travel (p. 891).

3. Compensation of Members of General Assembly.—Sec. 40. The members of the General Assembly shall receive for their services a compensation not exceeding three dollars per day, to be fixed by law, and paid out of the public treasury; but no increase of compensation shall take effect during the session at which such increase may be made (p. 496). Laid on the table (p. 506).

4. Legislative Authority to Fix Salaries.—The Legislature shall have power to fix the salaries of all State and judicial officers, and the pay of members of the General Assembly (p. 851).

5. Compensation of Public Officials.—Sec. 2. All officers, other than county and township officers and members of the General Assembly, shall receive for their services such compensation as shall be prescribed by law, but no increase or diminution of such compensation shall take effect during the term for which they shall have been severally elected: *Provided, however,* That this restriction shall not apply to the compensation of the first General Assembly which may convene after the adoption of this Constitution (p. 883). Laid on the table by a vote of 61-50.

6. Salary of Governor and Supreme Court Judges.—The annual salary of the Governor of this State shall never be less than fifteen hundred dollars, nor that of the Supreme and Circuit Judges less than one thousand dollars each (p. 863).

(g) ASSESSMENT AND TAXATION.

1. Assessment and Taxation of Property.—Sec. 41. The General Assembly shall provide by law a uniform rule of assessment and taxation, and shall prescribe such regulations as will secure a just valuation, for taxation, of all property both real and personal, excepting only such for municipal, educational, charitable, or religious purposes, as may be specially exempted by law. Rejected (p. 516).

2. Enforcement of Payment of Taxes.—Sec. 1. Hereafter no purchaser of any land or town lot, at any sale of lands or town lots for taxes due to this State, or any county, or any incorporated town or city within the same, or at any sale for taxes, levies or assessments authorized by the laws of this State, or any ordinance, or by-law of any town or municipal corporation thereon, shall be entitled to a deed for any land or town-lots so purchased, until he

or she shall have complied with the following conditions, to-wit: Such purchaser shall cause to be served by the sheriff or other proper officer, a written notice of such purchase, on every person in possession or occupancy of such land or town lot, at least three months before the expiration of the time of redemption on such sale, in which notice, he shall distinctly set forth when he purchased such land or town lot a particular description thereof, so as to clearly identify the same, the amount of the tax, per centum and costs necessary to redeem the same, and when the time of such redemption will expire; and in like manner he shall cause to be served on the person or persons in whose name or names such land or town lot shall have been listed for taxation a similar written notice, if such person or persons shall reside in the county where such land or town lot is situate; and if such person or persons do not reside therein, then such purchaser shall cause such notice to be published in some newspaper printed in such county, and if no newspaper be published therein, then in the newspaper published in this State nearest to the county in which such land or town lot is situated; which notice shall be published for three weeks successively, the last of which shall be at least three months previous to the expiration of the time of redemption; in which notice such purchaser shall furthermore state, unless the same shall be redeemed within the time limited for the redemption thereof, or for other good cause shown to the contrary, he will make a motion to the circuit court of the county in which such land or town lot is situate at the next ensuing term thereof, for an order directing the proper officer to execute to him a deed for such land or town lot, according to the provisions of the statutes in such cases made and provided. Such purchaser, before he shall be entitled to an order for a deed in such case, shall adduce to such court satisfactory proof of his having become the purchaser of such land or town lot for the taxes due thereon, and at the same time shall produce and file his certificate of purchase, together with the proof of his having given the notice and complied with the preliminary conditions herein, before purchased, and shall moreover file his affidavit to the same effect. Of all of which several matters, the court shall cause a record to be made in the order book of such court, and shall also cause the same to be filed among the records of said court, to be carefully preserved by the clerk thereof, and thereupon, unless good cause be shown to the contrary, cause an order to be made directing the proper officer to execute to such purchaser a deed accordingly, for such land or town lot, which shall have the effect



thenceforth to vest the said purchaser with a good valid and indefeasible legal title to such land or town lot. And it shall be the further duty of such court, upon awarding a deed to such purchaser as aforesaid, to enter up an order or decree directing such purchaser to pay into the clerk's office of said court, on or before the first day of the next term of said court, a sum which shall be equal to twenty per cent on the amount of the value of the land or lot so purchased, to be ascertained by recurrence to the assessment to the same, where last listed for taxation, which order or decree shall from the date thereof, operate as a lien on the said land or town lot as against said purchaser, or any alienee until satisfied, and if not, said decree may be enforced by execution against said land or town lot in whosoever hands or possession the same may be; which money, when collected, shall be applied to the benefit of common schools within the township wherein the said land or town lot is situated: *Provided, however,* That both the said purchasers, as well as the original owner of said land or town lot, or other person having an interest therein, shall be at liberty to take an appeal, or sue out a writ of error to the Supreme Court, for the purpose of reviewing the order of the circuit court in awarding a deed in such case (p. 395). Reported by a select committee appointed to ascertain the best method of enforcing the payment of taxes. Laid on the table (p. 801).

3. Prohibiting Poll or Capitation Tax.—Section 1. No poll or capitation tax shall hereafter be levied for State or county purposes (p. 277). Reported by a select committee on November 21. Laid on the table by a vote of 109-18 (p. 790).

(h) SUFFRAGE, ELECTIONS AND ELIGIBILITY TO OFFICE.

1. Referendum on Contested Elections.—Section —. All contested elections for senators and representatives of the General Assembly, and for all county and township officers, shall be sent back to the people for their decision, in a manner to be prescribed by law (p. 525). Laid on the table by a vote of 67-17.

2. Extension of Suffrage by Referendum Vote.—Sec. —. The legislature may, at any time hereafter, extend by law the right of suffrage to persons not herein enumerated; but no such law shall be in force until the same shall have been submitted to a vote of the people, at a general election, and approved by a majority of all the votes cast at such election (p. 525). Laid on the table.

3. Deprivation of Suffrage for Want of Documentary Proof.—Sec. —. No person entitled to vote, by the laws of this State, shall

be barred from voting on account of having lost or mislaid any certificate showing his legal right to vote (p. 525). Rejected.

4. Referendum on Change of County Boundaries.—Sec. 4. No county with an area of four hundred square miles or less, shall be divided or have any part stricken therefrom, without submitting the question to a vote of the people of the county or counties to be affected by the change; nor shall the change be made unless a majority of the votes cast upon the question shall be in favor of the change, and in that case the legislature shall have power to make such change (p. 881). Rejected by a vote of 39-72.

5. Ineligibility of Persons to More Than One Office.—Sec. 5. All state and county officers elected under this Constitution, shall be ineligible to any other office in this State during the time for which they were elected, and all votes given for such person in office for any other office, in violation of the above provision shall be void (p. 881). Rejected by a vote of 39-71.

6. Election of Canal Trustees, State Prison Warden and State Printer.—Sec. 1. There shall be elected by the qualified voters a trustee on the part of the State for the Wabash and Erie Canal, (so long as there is any necessity for such an office), warden to the state's prison, and state printer, and shall hold their office for two years, and until their successors are elected and qualified: *Provided*, That no person shall be eligible to the office of trustee of the Wabash and Erie Canal, warden to the state's prison, or state printer, more than four years in any term of six years (p. 264). Reported by the Committee on State Officers on November 18. Engrossed for third reading without amendment (pp. 788-89). Laid on the table on third reading by a vote of 113-17 (pp. 797-98).

The following amendments were proposed: (1) To strike out all reference to the canal trustees. Rejected by a vote of 42-87. (2) To eliminate the warden of the state prison and the state printer. (3) The warden of the penitentiary shall be elected by the convicts on the joint stock principal, each convict being entitled to as many votes as the number of years of service to which he was sentenced (p. 789).

7. Excluding Officers of Banks and Corporations from Seats in General Assembly.—Sec. 34. No president, director, or other officer or agent of any railroad, bank, banking, or other moneyed incorporated company in this State, shall be eligible to an election to either branch of the General Assembly of this State so long as he shall be such president, director, or other officer, or agent, nor until the lapse of six months from the time at which he shall have

ceased to be such president, director or other officer (p. 456). An attempt to lay this proposed section on the table was lost by a vote of 46-79. The section was then adopted by a vote of 70-57 and advanced to third reading, without amendment, by a vote of 67-57 (p. 456). Laid on the table by a vote of 79-47 (p. 465).

8. Ineligibility of Members of Constitutional Convention to Seats in Congress.—Nor shall any member of this Convention be eligible to a seat in Congress for the next five years after the adoption of this Constitution (p. 456).

9. Ineligibility of Members of Constitutional Convention to Any Office Provided for in Constitution for Period of Five Years.—*Provided*, That no member of this Convention shall be eligible to hold any office provided for in this Constitution until after the expiration of two years from the time of its adoption (p. 456). Rejected by a vote of 34-81.

10. Excluding Officers of Banks and Corporations from Seats in General Assembly.—Section 36. No president, cashier, director, or other officer of any bank, banking, or other incorporated moneyed institution of this State, authorized or empowered by law to issue bills, notes, deal in bullion, coin, bills of exchange or promissory notes, shall be eligible to an election to the General Assembly during the time he holds such office, place or station, or acts as such officer. Adopted by a vote of 67-62 and engrossed for third reading by a vote of 66-62 (p. 466).

11. Holding More Than One Lucrative Office.—Section 1. No person shall hold more than one lucrative office at the same time, except as in this Constitution is expressly permitted: *Provided*, That counties casting less than one thousand votes may confer the offices of clerk, recorder, and auditor, or any two of said offices upon one person (p. 173). Reported by the Committee on Tenure of Office on October 31. Laid on the table (p. 534).

12. Election of State Librarian.—Section 1. There shall be elected by the qualified voters of the State, a State Librarian, whose powers and duties shall be prescribed by law, and who shall hold his office two years, and until his successor be elected and qualified (p. 224). Reported by the Committee on State Officers on November 9.

13. Review of Election Contests by County Commissioners.—Section 1. The General Assembly shall provide by law for em-



powering boards of commissioners, in each county, to hear and determine all contested elections for the offices of members of the General Assembly, and for all county officers; and a mode by which appeals may be taken from the decisions of such boards to the circuit courts, and for empowering such boards and courts where justice cannot otherwise be done, to refer such contested elections back to the people (p. 797). Reported by the Committee on Elective Franchise on January 27. Laid on the table (p. 863).

14. Eligibility of Governor and Lieutenant-Governor to Office.—Sec. 26. Nothing in section second of this article shall be construed as to exclude a citizen of the United States or an elector in this State, who shall have attained the age of thirty years, from being eligible to the office of Governor or Lieutenant Governor (p. 550). Laid on the table.

(i) PRIVILEGES AND IMMUNITIES OF CITIZENS.

1. Liability for Debt or Default.—Sec. 1. No man shall be held to answer for the debt, default, or miscarriage of any other person upon any contract entered into from and after the year 1860, except in cases where executors, administrators, guardians, trustees, and public officers are required to give bond and security, and where security is given to persons acting in a fiduciary capacity (p. 520). Reported by a select committee on December 24. Laid on the table (p. 826).

2. Prohibiting Special Privileges and Immunities.—Sec. —. All the members of the political State of Indiana shall have the same rights, privileges, and immunities, because one man is as good as another, if not a "*leetle better*" (p. 688). Referred to the Committee on Rights and Privileges.

3. Limitation on Recovery of Real Estate Adversely Held.—Sec. 2. The legislature shall by law make provision for limiting the right of action to recover real estate, where adversely held, to fifteen years—reserving the rights of married women, infants, insane persons, idiots, and persons not residing in the United States to a period not exceeding five years after the removal of such disability (p. 861). Rejected; reconsidered by a vote of 66-47, and rejected by a vote of 51-63 (p. 862).

4. Property Rights of Resident and Non-Resident Aliens and their Residuary Legatees.—Sec. 1. Resident aliens shall have power to acquire real estate in this State the same as citizens, and shall also have power to dispose of their property, whether real or personal, within the jurisdiction of said State by testament,

donation, or otherwise; and when a person dies intestate, whose heirs or representatives are aliens, such representatives shall succeed to personal property the same as if they were not aliens, and the heirs, legatees, and distributees, of any such intestate shall succeed to all rights and privileges as such heirs, legatees, or distributees the same as if they were citizens of the United States: *Provided*, That if aliens residing in foreign countries become the owners of real estate in this State, by testament or descent, such aliens shall be allowed ten years to sell and dispose of the same, or to become citizens of the United States, and in default thereof, such real estate shall escheat to the State of Indiana for the use of common schools in the county where such real estate is situate (p. 764). Reported by a select committee on January 24. Laid on the table (p. 860).

5. Property Rights of Aliens.—Sec. 21. No distinction shall be made by law between resident aliens and citizens in the possession, enjoyment, or descent of property (p. 592).

6. Property Rights of Aliens.—Sec. 21. All real estate in this State, if not willed, shall descend to the heirs of the owner, whether residents, non-residents, or aliens (p. 529). Referred to a select committee of five with the following proposed amendment:

Foreigners who are, or who may hereafter become residents of this State, shall enjoy the same rights in respect to the possession, enjoyment, and descent of property as native born citizens (p. 592).

7. Forced Sale of Property for Two-Thirds of its Value, Only.—No law shall be passed subjecting real estate to sale under execution for less than two-thirds of its appraised value, nor personal property for less than one-half of its appraised value (p. 468). Laid on the table by a vote of 84-40.

#### (j) LEGISLATIVE PROCEDURE.

1. Legislative Committee of Revision.—The legislature shall provide by law for the election of a committee of revision to correct the phraseology of acts passed by the legislature, so as to conform to the constitution (p. 435). Laid on the table.

2. Speeches in French and German.—That every Buncombe speech shall be made, not only in the English language, but also in German and French, so that all those belonging to either of the classes, may be prepared to judge for themselves, and not be de-

pendent on interpreters for the information so requisite to enable them to come to correct conclusions.

And all names commencing with "Mac," shall hereafter be rendered into good English (p. 436). Rejected.

3. Authorizing the Auditor and Treasurer to Debate Financial Questions on Floor of House.—The Auditor and Treasurer of State, by virtue of their office, may debate all questions of finance upon the floor of the House of Representatives, but shall not vote (p. 460). Laid on the table.

4. Time Limitation on Introduction of Bills.—Sec. 29. No bill shall be introduced into either House of the General Assembly within three days before the day of a general adjournment, and no bill shall be presented to the Governor for his approval on the day of a general adjournment, or on the next preceding day: *Provided, however,* That the legislature may, by a majority of two-thirds, introduce and pass any law within the last three days of the session (p. 551). Laid on the table.

#### (k) CONCLUSION OF THE GOVERNMENT UNDER THE CONSTITUTION OF 1816.

1. Termination of Offices of Incumbents Under Constitution of 1816.—The Governor, Lieutenant Governor, Senators and Representatives shall continue in office until their successors are elected and qualified under this Constitution, and their successors shall be elected at the first general election under this Constitution, anything in this Constitution to the contrary notwithstanding (p. 920). Proposed by Mr. Walpole on February 5; referred to a select committee of ten.

2. Submission of Constitution and Certification of Election—

1st. This Constitution shall be submitted to the people for their adoption or rejection, at an election to be held for that purpose in the several counties of this State, on the first Monday in June, 1851. And there shall also be submitted for adoption or rejection, at the same time, the separate article in relation to the exclusion of "Negroes and Mulattoes and their colonization."

2d. The said election shall be by ballot, and shall be conducted according to the laws now in force in relation to the election of Governor, so far as applicable, and every person entitled to vote by the Constitution shall, on the first Monday in June, 1851, be entitled to vote for or against the adoption of this Constitution, and for or against the aforesaid article separately sub-



mitted; and they shall vote in the township in which they reside at the usual places of holding elections, and not elsewhere.

3d. Those voting against the adoption of this Constitution shall vote written or printed tickets in this form, "against the Constitution;" and those voting for the adoption of it, shall vote written or printed tickets in this form, "for the constitution." Those voting against the adoption of the separate article in relation to the exclusion of negroes and mulattoes and their colonization, shall vote a written or printed ticket in this form, "Against the Negro and Mulatto article;" and those voting in favor of adopting said article shall vote a written or printed ticket in this form, "For the exclusion of negro and mulattoes and their colonization."

4th. Poll books shall be kept, votes counted, and certified to the clerks of the different counties, and canvassed as in other elections. And the returns of the votes for the adoption and rejection of this Constitution, and for and against the said separate article submitted, shall be made by said clerks to the Secretary of State within — days after said election; and said returns shall, within — days thereafter, be examined and canvassed by the Auditor, Treasurer, and Secretary of State, or any two of them in the presence of the Governor and such persons as shall choose to attend; and proclamation shall be made by the Governor forthwith of the result of the election. If it shall appear that a majority of all the votes polled at such election were given for the adoption of this Constitution, it shall be the Constitution of the State of Indiana, from and after the 4th day of July, 1851. But if it shall appear that a majority of all the votes polled were given against the Constitution, the same shall be null and void. If it shall further appear that a majority of all the votes polled shall have been given for the separate article in relation to the exclusion of negroes and mulattoes and their colonization, then said article shall be and form a part of this Constitution, otherwise said article shall be null and void.

Should the Constitution be rejected and the separate article adopted, then the said article shall be ordained and established as an amendment to the Constitution of the State of Indiana, adopted in 1816.

Should this Constitution be adopted, there shall be a general election held in the townships of the several counties of this State on the 2d Tuesday in October, 1851, for the election of three Judges of the Supreme Court, a Judge and Prosecuting Attorneys

for each of the Judicial Circuits, Auditor, Treasurer, and Secretary of State, Representatives to Congress, Clerk of the Supreme Court, and all other State and county officers, where election would have taken place on the 1st Monday in August, 1851, had there been no change in the Constitution of this State, the election canvass and return shall be governed by the existing law upon the subject of general elections.

It shall be the duty of the clerks of the Circuit Courts within ten days after said election to certify to the Secretary of State the result of the election held within his county for Judges of the Supreme and Circuit Courts, Auditor, Treasurer, Secretary of State, Prosecuting Attorneys, Clerk of the Supreme Court, Representatives to Congress, which returns shall be published as by law required in case of the election of Governor (pp. 874-75). Reported by the Committee on Miscellaneous Provisions on February 1. Laid on the table; subsequently taken from the table and referred to a select committee of ten (pp. 916-20). The committee recommended the adoption of sections 1 and 2; they were unable to agree on section 3; and recommended that the other sections be laid on the table (p. 952).

#### (1) MISCELLANEOUS PROVISIONS.

1. Fixing Number of Constitutional Delegates.—Section 7. If at any time hereafter a Convention shall be called, there shall not be elected more than fifty delegates to such Convention (p. 850). Laid on the table.

2. Qualifications to Practice Law, Medicine and Surgery.—Sec. 2. All white male citizens of the age of twenty-one years and upwards, of good moral character shall be permitted to practice medicine and surgery, and law in the several courts of this State (p. 789). Laid on the table.

3. Punishment for Invasion of Friendly Foreign Soil.—Sec. --. Every person who shall unlawfully engage in any invasion of territory belonging to a foreign nation, with whom the United States are at peace, shall, on conviction of such offence, be *ipso facto* disfranchised, and incapable of holding any office of honor or trust thereafter, under this Constitution (p. 353). Rejected.

4. Divisions of Government.—Sec. 27. The government of Indiana shall be divided into three separate and distinct powers, each of which shall be confined to a separate and distinct magistracy, to wit: those which are legislative to one, those which are executive to another, and those which are judiciary to another;

and no person or collection of persons being of one of these departments, shall ever exercise any power or right properly belonging to either of the others, except as herein expressly granted (p. 550). Laid on the table.

5. Exempting Certain Townships From Uniform Operation of Laws.—Section 1. The provisions contained in this Constitution requiring uniform laws regulating township business, shall not affect the laws now in force regulating the mode of transacting business in the several townships in the counties of Dearborn, Switzerland, Ohio, Wells, and Adams; but the General Assembly may, when deemed expedient, amend or repeal said laws (p. 877). Reported by the Committee on Miscellaneous Provisions on February 1. Laid on the table with a pending amendment to include Elkhart, LaGrange, Allen, Steuben, Jennings and Jackson counties (p. 893).

6. Agricultural and Educational Statistics.—Section 1. It shall be the duty of the General Assembly to provide by law that the county auditor, or other proper officer of the several counties, shall annually furnish to the Secretary of State a report of the agricultural productions of each county.

Sec. 2. It shall be the duty of the General Assembly to provide by law that the county auditor, or other proper officer of the several counties, shall annually furnish to the Secretary of State, a statement of the number of children who are instructed in the district and common schools, the number of district school houses, the amount of money applied to the purposes of such schools, and such other information as may be necessary in regard to common schools (p. 191). Reported on November 4 by the Committee on the Executive Department, after consideration of certain resolutions relative to the collection of statistical information or agriculture and education. Laid on the table, section 1 by a vote of 66-61 (pp. 594-95).

Amendments proposed and rejected: (1) Requiring biennial instead of annual reports. (2) Requiring a report in the year 1855, and every ten years thereafter, including also the number of inhabitants.

7. Prohibiting Licensing of Sale of Intoxicating Liquors.—Section —. The General Assembly shall not pass any act authorizing the grant of license for the sale of intoxicating liquors (p. 478). Reported by a majority of the select committee to whom was referred certain resolutions relative to the liquor traffic, 6n December 19. Laid on the table.



8. State Geological Survey.—Section—. It shall be the duty of the General Assembly to provide by law, within five years after the adoption of this Constitution, for a thorough geological survey of the State (p. 544). Reported by a select committee who had been considering the subject of a geological survey of the state. Laid on the table (p. 827).

**143. An Address to the Electors of the State (February 8, 1851).**

On January 21, 1851, Mr. Owen introduced a resolution in the Convention providing "that a committee of one from each congressional district be appointed by the Chair, to prepare an address to the electors of the State, embodying a brief statement of the changes proposed in the amended Constitution, and such other matters in connection therewith, as may aid in securing its adoption." This resolution was adopted by the Convention.

On January 25 the President announced the following committee:

- 1st District—Mr. Owen;
- 2d District—Mr. Carr;
- 3d District—Mr. Berry;
- 4th District—Mr. Smiley;
- 5th District—Mr. Maguire;
- 6th District—Mr. Helmer;
- 7th District—Mr. Davis of Vermillion;
- 8th District—Mr. Bryant;
- 9th District—Mr. Colfax;
- 10th District—Mr. Bascom.

On February 8, the select committee unanimously reported the following address which was concurred in by the Convention.

*[Convention Journal, 964.]*

**TO THE PEOPLE OF INDIANA.**

Chosen by the electors of the State of Indiana for the purpose of considering the present Constitution, and of proposing for adoption or rejection by the people, an amended Constitution, embodying such changes as we might deem proper, we have completed the task assigned us; and now lay before you the result of our labors.

The chief amendments which we have thought it useful to make are, briefly stated, as follows:

**IN THE BILL OF RIGHTS.**

In addition to the guarantees which find a place in the old Constitution, to secure the rights of conscience and prevent the imposition, on the citizen, of any tax to support any ministry or mode of worship against his consent, it is provided, that no person shall be rendered incompetent as a witness, in consequence of his

opinions in matters of religion; and that no money shall be drawn from the treasury for the benefit of any religious or theological institution. Both these provisions are found in the Constitutions of Michigan, Wisconsin, and others of recent date.

In the old Constitution the provision as to the taking of private property for public use, is that it shall not be taken "without just compensation being made therefor;" but it is not declared, whether or not this property shall be assessed and be paid for, before it is taken. The provision in the new Constitution is, that when property is taken (except in the case of the State) compensation shall be "first assessed and tendered." This is an important change. As the law now stands, an incorporated company, constructing a railroad or other public improvement, may take a man's property first, and pay for it afterwards. The change proposed requires, that, before taking any property, a tender should first be made of its assessed value. If that tender be rejected by the owner, and he seek his remedy by appeal, the property may be taken; so that one man may not be able, by unreasonable obstinacy, to arrest for months or years, a work of public importance.

The principle of exempting a reasonable amount of the property of the debtor from seizure or sale, is asserted; but without specifying any amount. There is no provision of this kind in the old Constitution; though the present law, usually called the "hundred and twenty-five dollar law," is based upon the principle thus proposed to be permanently established.

The legislature is authorized to continue, modify or abolish, the grand jury system. Under the old Constitution, the provision for retaining it was imperative.

The right of trial by jury is secured in all cases, civil and criminal. By the old Constitution, where the amount in controversy was less than twenty dollars, and also in prosecutions for petit misdemeanors, this right was not secured.

It is provided that "the General Assembly shall not grant to any citizen or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens." This important provision is new.

#### AS TO SUFFRAGE AND ELECTION.

By the old Constitution, citizens of the United States only were entitled to vote. Under the new, foreigners who have been in the United States one year, and in this State six months immediately before any election, and who shall have declared under oath, their

intention to become citizens, have the right of voting. This liberal provision will undoubtedly tend to increase the wealth and population of our State, by attracting emigrants towards it.

Postmasters, if their annual compensation be ninety dollars or less but not otherwise, may be elected members of the legislature. In counties with less than a thousand polls, but in no others, the offices of clerk, recorder, and auditor, may be conferred on the same person. Both of these are new provisions.

No one who gives or accepts a challenge, or carries to another a challenge to fight a duel, shall be eligible to any office of trust or profit. This also is new.

#### IN THE LEGISLATIVE DEPARTMENT.

The provision in regard to the number of senators and representatives remains unchanged. It is not to exceed a hundred in the House, and fifty in the Senate; but that number may be at any time reduced by law.

The regular sessions of the legislature are to be held once only in two years; but the Governor, if he think the public welfare requires it, may call special sessions. No regular session is to be longer than sixty-one days; nor any special session longer than forty days.

As the entire expense of the sessions of our General Assembly, including printing of laws and journals, has averaged, for the last ten years, upwards of forty thousand dollars annually, the saving, by the change to biennial sessions, may be set down at twenty thousand dollars a year. Thus, if no special session be called during five years, the saving in that period, by this provision alone, will overpay the entire expenses of the Convention. Thus will also be afforded some opportunity to become acquainted with the laws of one session before these are followed by the amendments of the next.

The following provisions, tending to check and regulate the Legislative branch of government, are not found in the old Constitution:

*First.* Every bill is to be read throughout on three several days, unless two-thirds, under the ayes and noes, suspend the rule.

*Second.* On the final passage of a bill, it is forbidden, under any circumstances, to dispense with its reading by sections.

*Third.* A majority of all the members elected to either branch shall be necessary to pass a law. The present Constitution per-



mits a majority of those present (which may be a bare majority of a quorum) to pass a law.

*Fourth.* No law is permitted to be revised or amended by mere reference to its title; but the law so revised or amended must be set forth at full length. Great abuses have arisen for lack of such a provision. Amendments have been made, of which the House which enacted them knew the character only by some brief verbal statement from a member interested in their passage.

*Fifth.* No law is to embrace more than one subject and matters properly connected therewith; and the subject is to be expressed in the title. The tendency of this rule is to prevent what is familiarly termed "log-rolling." Two provisions, having no proper connection with each other, may, under the present Constitution, be embraced in the same bill, and be carried by a combination of their respective friends, though neither, in itself, has merit or strength enough to obtain the vote of a majority, and would fail, as it ought if voted upon singly.

*Sixth.* No law is allowed to pass except under the ayes and noes, entered on the journals. This is one of the most effectual safeguards against hasty and inconsiderate legislation, and secures, under all circumstances, the responsibility of members of the legislature to their constituents.

*Seventh.* All elections by the General Assembly are by a *viva voce* vote, recorded on the journals.

*Eighth.* The most important restriction imposed on the legislative branch, is that which provides that in a variety of enumerated cases (as the jurisdiction of justices of the peace, the mode of doing county and township business, the fees of county and township officers, road laws, common school laws, and so forth), and in all other cases where a general law can be made applicable no special law shall be passed. It is an estimate much within the truth, that more than two-thirds of all the laws enacted in this State since her admission into the Union, have been of the character here forbidden. More than two-thirds of our legislation, therefore—and the most confusing and most mischievous portion of it—is cut off by this single provision. Independently of the intrinsic benefits of such a change, the saving thereby effected of expense, both as regards the time of the legislature and the cost of printing our laws, will be great.

*Ninth.* By general law, provision may be made for suing the State, but no special act authorizing suit to be brought against the State, or allowing damages against the State, is permitted. This

will remove to Courts of justice, where they properly belong, numerous claims which cannot be urged through a legislative body without temptation to demoralizing influences.

*Tenth.* The legislature is prohibited from granting divorces.

*Eleventh.* Representatives hold their offices two years, serving one regular session. Senators hold their offices four years, serving two regular sessions.

*Twelfth.* The general elections, instead of being held as now, on the first Monday in August, are to be held on the second Tuesday in October of each year. This latter period is one of much greater leisure to farmers than the former.

#### IN THE EXECUTIVE DEPARTMENT.

The changes in this department are unimportant, being chiefly these:

The Governor and Lieutenant Governor are elected for four, instead of three years, to correspond to the biennial sessions of the legislature.

Neither of these officers is eligible more than four years in any period of eight years, nor to any other office during the term for which he has been elected. These provisions are not in the old Constitution.

There is a slight change in regard to the veto power. If a bill be presented to the Governor within three days of the close of the session and he fail to return it, it shall be a law, unless he file the bill, together with his objections, in the office of the Secretary of State within five days after the adjournment. By the old Constitution he might hold it over until the next session, and then return it, with his objections.

#### AS TO THE STATE AND COUNTY OFFICERS.

The Secretary of State, Auditor of State, and Treasurer of State, who were elected under the old Constitution by the legislature, are now elective by the people. The Secretary held his office for four years, and the Auditor and Treasurer theirs for three years; now, the term of office for all these officers is two years only; and they are not eligible more than four years in any period of six years.

In the counties the term of service of the clerk, auditor, and recorder is put, in the new Constitution, at four years; and they are not eligible more than eight years in any period of twelve years. The sheriff and treasurer hold their offices for two years, and are not eligible more than four years in any term of six years.

## IN THE JUDICIAL DEPARTMENT.

The Supreme and Circuit Judges, heretofore chosen, the former by appointment of the Governor, confirmed by the Senate, and the latter by joint vote of both Houses, are, by the new Constitution, made elective by the people. There are to be not less than three nor more than five Supreme Judges, each to reside in and be elected from his own district; but all to be chosen by the votes of the people at large. Each Circuit Judge is chosen by the vote of the electors of the circuit.

A Judge is rendered ineligible, during the term for which he may have been elected, to any other than a judicial office. This provision is new.

There is to be elected, by the people, a Prosecuting Attorney for each Judicial Circuit.

Every person of good moral character, who is a voter, is entitled to admission to practice law in any of the Courts of the State.

## AS TO LAW REFORM.

The General Assembly is required, at its first session, to appoint three commissioners, whose duty it shall be to revise and simplify the practice and forms of the courts. They are to abolish the separate forms of action now in use; and to provide for a uniform mode of pleading, without distinction between law and equity. The legislature may also cause these commissioners to reduce into a systematic code, the general statute law of the State.

These reforms are of an important character; calculated to diminish the cost and to correct the delay of law proceedings. As the law now is, a man may prosecute a perfectly just claim, but if he commence suit on what an arbitrary rule calls the wrong side of the court, he cannot recover. So, also, a man may have various demands for money against a neighbor, all of which could naturally and conveniently be set forth in the same declaration; but ancient practice has declared that there are some ten or twelve different forms of action; and he may have to bring a separate suit, with its separate expenses, for each demand though varying very slightly in their character. A remarkable example is this: If a man holds two promissory notes against another, payable in current bank paper, the one being sealed and the other not sealed, he must bring a separate suit upon each. No reason but a purely arbitrary one, founded on antiquated usage, can be given for such vexatious and cost-increasing distinctions.



The legislature is authorized to establish courts of conciliation, for the speedy decision of cases that may be voluntarily submitted to them, without the tedious and expensive process of law.

#### EDUCATION AND STATE INSTITUTIONS.

The principal change in this department, is the abolition of county seminaries, and the application of the funds to common schools. It is also provided that the legislature shall establish a uniform system of common schools, wherein tuition shall be free. The swamp lands recently granted by Congress, and which, it is supposed, may be worth half a million of dollars, are added to the common school fund.

A Superintendent of Public Instruction is to be elected by the people, his term of office being two years. The large amount of the school fund scattered all over the State, and the important interests involved, demand the undivided attention of a competent officer.

The counties are made responsible for such portions of the common school fund as may be entrusted to them. This incorporates in the constitution, a provision for the security of that fund, which has long been the statute law of the State.

The institutions which the benevolence of Indiana has reared for the blind, the deaf and dumb, and the insane, are perpetuated by constitutional provision.

The legislature is instructed to establish houses of refuge for the correction and reformation of juvenile offenders.

#### PUBLIC DEBT.

The legislature is prohibited from incurring any debt except to meet casual deficits in the revenue, to pay the interest on the present State debt; or to repel invasion or suppress insurrection.

Had this provision, brief and simple as it is, been inserted in the Constitution of 1816, it would have saved the State from a loss of six millions of dollars. Upon that sum we are now paying, without any return, some three hundred thousand dollars of interest annually; that is, about eight hundred dollars a day; more than enough to maintain in perpetual session, year after year, with all its expenses of reporting and printing, such a Convention as that which has been engaged, for the last four months, in framing a constitution, which shuts out for the future, all possibility of similar folly.

No county is allowed to subscribe stock to any incorporated

company unless the same be paid at the time of subscription. The State is prohibited from assuming the debt of any town or county.

#### AS TO BANKING AND CORPORATIONS.

The legislature may, or may not, establish banks in this State. If they establish banks, it is to be under the following restrictions:

No bank shall be created, otherwise than by general law, except one bank with branches.

If the legislature decide to enact a general banking law, all banks thereby created, are to give ample collateral security, such as may be readily converted into money, for the redemption of all their notes in gold and silver; and this security is to be lodged in the hands of some officer of State. No such security has heretofore been demanded of banks in this State.

If the legislature decide to charter a bank with branches, the branches are to be mutually responsible, as the branches of our State bank now are.

The State is not hereafter to be a stockholder in any bank or other corporation.

All banks are required to redeem their notes, at all times, in gold and silver; and the legislature is prohibited from ever authorizing a suspension of specie payments.

The stockholders in all banks are to be held individually responsible to an amount, over and above their stock, equal to the amount of their stock.

In case of insolvency, holders of bank notes are to have preference of payment over all other creditors.

No bank is to receive a higher rate of interest than is allowed to individuals loaning money.

Every bank is to cease banking operations within twenty years from the time it is organized, and promptly thereafter to close up its business.

These restrictions on banking, not imposed by the former constitution, though stringent in their character, will not, it is believed, prohibit banking under a safe system, by responsible associations. The restrictions on banking under a general law, are similar to those of the New York system, as amended according to the provisions of the new Constitution of that State. Under that amended system, not a dollar has been lost to the bill-holders. As to the principle of making the branches of a bank, if established with branches, responsible for each other's liabilities, it has

worked so well, in the charter of our present State bank, that it is believed a large majority of the people approve it.

In addition to the above restrictions, applying specially to banks, it is provided, as to corporations generally, that they shall not be created by special act, but may be formed under general laws.

#### NEGROES AND MULATTOES.

The article in regard to negroes and mulattoes is to be submitted separately to the people. It provides,

*First*—That no negro or mulatto shall come into, or settle, in this State, after the adoption of the new Constitution.

*Second*—That all contracts made with negroes or mulattoes who may come into this State, contrary to the foregoing provision, shall be void, and all persons who shall employ any such negro or mulatto, shall be fined in any sum not less than ten, nor more than five hundred dollars.

*Third*—That all fines collected for any breach of this article shall be applied to the colonization of so many of the negroes and mulattoes, now in this State, as may desire to emigrate.

As to any further provision for colonization, it is left to future legislation. A majority of the Convention were of opinion, that the true interests alike of the white citizens of this State and of its colored inhabitants, demanded the ultimate separation of the races; and that, as the negro cannot obtain among us, equal social and political rights, it is greatly to be desired that he should find a free home in other lands, where public opinion imposes upon color neither social disabilities nor political disfranchisement.

No additional disability, not found in the old constitution, is imposed by the new, on negroes or mulattoes or their descendants, who may be in the State at the time of the adoption of the amended Constitution.

#### MODE OF AMENDING THE CONSTITUTION.

Amendments to the Constitution may be proposed in the Senate or House of Representatives. If passed by a majority of all the members elected to either branch, they are referred to the next regular session of the legislature, to be held two years thereafter. If passed by them a second time, they are then, at the next general election, to be submitted to the people; and if they pass the final ordeal, they become a part of the Constitution.

In this way there will always occur a general election of mem-



bers of the legislature, during the canvass for which, the amendments that may have been proposed at the previous session, can be brought in issue; and nearly three years must intervene, from the time an amendment is first proposed, before it can be finally adopted.

There was provided, in the old Constitution, no mode of submitting to the people separate amendments. The advantage of the provision is, that without the expense of a Convention, the new Constitution, if found faulty or deficient in any of its parts, may be amended and perfected.

With this brief explanatory statement of the more important alterations embodied in the new Constitution, we place our work in the hands of our constituents, who alone can give it vitality.

Those who desire to examine arguments for or against the various changes that have been made, will find them, spread at large, throughout the Debates of the Convention; officially reported, in accordance with the law which provided for the call of a Convention, by a corps of stenographers. Of the two volumes in which these debates are embraced, three copies will be deposited in the Clerk's office of each county throughout the State.

It was our expectation, when we first engaged in the task of revision, to be able to complete it at an earlier day. But the deliberations of a numerous body necessarily proceed slowly; and it would have been a culpable violation of duty, for the sake of ephemeral popularity, hastily, or without the fullest and most deliberate consideration, to pass upon great questions involving the dearest rights and most vital interests, not of the present generation alone but of others that are to succeed.

**144. Act Requiring Governor to give Notice of Deposition of Constitution with Secretary of State, and Election for Ratification of Constitution (February 14, 1851).**

The following act was approved four days after the adjournment of the Constitutional Convention. By the provisions of this act the Governor was required to notify the electors that the draft of the proposed new Constitution had been deposited in the office of the Secretary of State and to publish the Constitution in full in three successive issues of the *Indiana State Sentinel*, the *Indiana State Journal* and the *Statesman*. The act also contained some supplementary provisions relative to the election to be held in August of 1851. The proposed new Constitution was published in full in the *Weekly Indiana State Journal* of February 22, March 1 and March 8, 1851. The Governor's official proclamation (See Document No. 145) appears in the same paper of March 1 and March 8, 1851.

[*Laws, Thirty-Fifth Sessions, 53.*]

AN ACT to amend an act entitled "AN ACT for the call of a convention of the people of the State of Indiana to revise, amend, or alter the Constitution of said state," approved January 18, 1850.

Section 1. *Be it Enacted by the General Assembly of the State of Indiana,* That it shall be the duty of the Secretary of State, so soon as the new or amended Constitution is deposited in his office, to give notice thereof to the Governor, whose duty it shall be thereupon to notify the people by proclamation of the deposit of the same; and at the same time to cause a copy thereof to be published for three weeks successively in the Indiana State Sentinel, the Indiana State Journal, and the Statesman.

Sec. 2. There shall be a vote taken on the first Monday of August next, on the adoption or rejection of said Constitution, and on the adoption or rejection of the separate article thereof, relating to the exclusion of negroes and mulattoes from this State; and for this purpose it shall be the duty of the inspectors and judges of elections in the several townships in this state, on said first Monday of August next, to open a poll in which shall be entered all the votes given for and against the adoption of said Constitution and of said separate article. Said election shall be by ballot, and shall be governed in all respects by the laws now in force in relation to general elections, so far as applicable.

Sec. 3. Those voting against the adoption of said Constitution shall vote written or printed tickets in this form: "against the Constitution", and those voting for its adoption shall vote written or printed tickets in this form: "for the Constitution." In like manner, those voting against the separate article in relation to the exclusion of negroes and mulattoes and their colonization, shall have written or printed on his ticket these words: "no exclusion and colonization of negroes," and every voter who is in favor of adopting said article, shall have written or printed on his ticket these words: "exclusion and colonization of negroes and mulattoes."

Sec. 4. Poll books shall be kept, votes counted, and certified to the clerks of the different counties as in other elections, and the returns of the votes for and against the adoption of said Constitution, and for and against said separate article, shall be made by said clerks to the Secretary of State within ten days after said election, and said returns shall, within twenty days thereafter, be examined and canvassed by the Auditor, Treasurer, and Secretary of

State or any two of them, in the presence of the Governor and such other person as may choose to attend, and proclamation shall be made forthwith by the Governor of the result of the election. If it shall appear that a majority of all the votes polled at such election were given in favor of the adoption of said Constitution, it shall then become the Constitution of the State of Indiana from the first day of November, 1851; but if it shall appear that a majority of all the votes polled for or against the adoption of said Constitution and said separate article, were given against the adoption of said Constitution, then the same shall be and remain inoperative and void. If it shall further appear that a majority of all the votes polled for or against the adoption of said Constitution and said separate article were given in favor of the article in relation to the exclusion of negroes and mulattoes and their colonization, then said article shall be and form a part of said Constitution, otherwise said article shall be void.

Sec. 5. This act to be in force from and after its passage; and all acts and parts of acts contravening the provisions of this act, be, and the same are hereby repealed.

Approved, February 14, 1851.

**145. Governor's Proclamation Notifying Electors of Deposition of Constitution in Secretary of State's Office, and Election of August, 1851 (February 25, 1851).**

In compliance with the requirements of the act of February 14, 1851, Governor Joseph A. Wright issued the following proclamation on February 25th, notifying the electors that the authorized draft of the proposed new Constitution had been deposited in the office of the Secretary of State, and that an election would be held in August, 1851, at which the electors would be expected to ratify or reject the proposed new Constitution.



[*Weekly Indiana State Journal*, March 1, 1851.]

OFFICIAL PUBLICATION.

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PROCLAMATION.

BY THE GOVERNOR OF INDIANA.

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JOSEPH A. WRIGHT, Governor of the State of Indiana, to the several Judges, Inspectors, and Clerks and other officers of the several counties of this State, authorized by law to hold elections for the various offices of the State, and all others whom it may concern, Greeting:

KNOW YE, That the Convention which assembled on the first Monday of October, 1850, at Indianapolis, for the purpose of revising, amending, or altering the Constitution of this State, have, in pursuance of the law of the land, deposited said Constitution so made in the office of the Secretary of State, due notice of which has been given to me, and a copy of said Constitution is herewith published; and that by virtue of an act of the Legislature, approved on the 14th day of February, 1851, it is directed that said instrument shall be submitted to the people of this State for their adoption or rejection, at the next annual August election, and to say whether said instrument shall or shall not be the Constitution of the State, and among other things provided as follows, to-wit:

Section 2. There shall be a vote taken on the first Monday of August next, on the adoption or rejection of said Constitution, and on the adoption or rejection of the separate articles thereof, relating to the exclusion of negroes and mulattoes from this State; and for this purpose it shall be the duty of the inspectors and judges of elections in the several townships in this State, on said first Monday in August next, to open a poll, in which shall be entered all the votes given for and against the adoption of said Constitution, and of said separate article: Said election shall be by ballot, and

shall be governed in all respects by the laws now in force in relation to general elections, so far as applicable.

Section 3. Those voting against the adoption of said Constitution, shall vote written or printed tickets in this form: "Against the Constitution," and those voting for its adoption shall vote written or printed tickets in this form: "For the Constitution;" In like manner those voting against the second article in relation to the exclusion of negroes and mulattoes, and their colonization, shall have written or printed on his ticket these words, "No exclusion and colonization of Negroes;" and every voter who is in favor of adopting said article shall have written or printed on his ticket these words; "Exclusion and colonization of Negroes and Mulattoes."

Section 4. Poll books shall be kept, votes counted and certified to the clerks of the different counties as in other elections, and the returns of the votes for and against the adoption of said Constitution, and for and against said separate article, shall be made by said clerks to the Secretary of State, within ten days after said election, and said returns shall, within twenty days thereafter, be examined and canvassed by the Auditor, Treasurer, and Secretary of State, or any two of them, in the presence of the Governor, and such other persons as may choose to attend; and proclamation shall be made forthwith, by the Governor, of the result of the election. If it shall appear that a majority of all the votes polled at such election were given in favor of the adoption of said Constitution, it shall then become the Constitution of the State of Indiana, from the first day of November, 1851; but if it shall appear that a majority of all the votes polled for or against the adoption of said Constitution, and said separate article, were given against the adoption of said Constitution, then the same shall be, and remain, inoperative and void. If it shall further appear that a majority of all the votes polled for or against the adoption of said Constitution and said separate article, were given in favor of the article in relation to the exclusion of negroes and mulattoes and their colonization, then said article shall be, and form a part of said Constitution; otherwise said article shall be void.

THEREFORE, In compliance with the provisions of said Constitution, and of the act aforesaid, I do hereby direct and enjoin upon all the officers of this State, authorized by law to hold the next annual August election, and all others whom it may concern,

to observe and obey, and in all things to conform to each and all the requirements and provisions of said law.

[Seal] IN TESTIMONY WHEREOF, I have signed this Proclamation, and caused the Seal of this State to be hereunto affixed at Indianapolis, on this, the 25th day of February, A.D. 1851, and in the thirty-fifth year of the State, and the seventy-fifth of the Nation.

JOSEPH A. WRIGHT.

BY THE GOVERNOR:

CHARLES H. TEST, *Sec'y of State*.

**146. Printer to the Convention (February 8, 1851).**

The state printer in 1850 was Mr. Jacob P. Chapman a constitutional delegate from Marion county and a Whig in politics. The Democrats desired to appoint a member of their own party and they therefore advanced the theory that the state printer was legally incompetent to do the printing for the Convention. Accordingly, the Convention adopted a resolution providing for the appointment of a committee of seven to "inquire into the legality of the claim of the present state printer to do the printing for this Convention." This committee reported that they were "unanimously of opinion that the state printer is not ex officio the printer to this Convention, and has no legal claim by virtue of his office to do the printing for this Convention", and this report was concurred in. On October 18, Mr. Austin H. Brown was elected as printer to the Convention. The act herewith set out relates to the rival claims of Chapman and Brown.

[*Laws, Thirty-Fifth Session, 139.*]

AN ACT in relation to the pay of Austin H. Brown, printer to the Constitutional Convention of Indiana.

Section 1. *Be it Enacted by the General Assembly of the State of Indiana*, That the Auditor of State be, and he is hereby authorized and required to audit the accounts made by the Constitutional Convention of this State now in session, upon the certificate of the President thereof, which certificate of the President of the Convention shall particularly specify the object of each allowance, and the person or persons in whose favor the same is made:<sup>17</sup> *Provided*, That the aggregate price for printing shall be ascertained in the manner prescribed by the law regulating the measurement of the state printing.. *And Provided, further*, That nothing herein contained shall be so construed as to

17. See Appendix.



operate against the claim of Jacob P. Chapman, the state printer, or his assignee or assignees, if any he or they have against the state.

Sec. 2. That Erastus W. H. Ellis and John S. Spann, the assignees of Jacob P. Chapman, state printer of the State of Indiana, be, and they are hereby authorized to bring suit against the State of Indiana in the Marion circuit court, in accordance with the provisions of chapter 45, of the general laws of 1840, page 66, for such damages, if any, as they may have sustained in consequence of the printing of the Constitutional Convention being withheld from them.

Sec. 3. This act to be in force from and after its passage.

Approved, February 8, 1851.

**147. Appropriations for Expenses of Constitutional Convention  
(February 12, 1851).**

*[Laws, Thirty-Fifth Session, 132.]*

AN ACT to authorize the Governor, Auditor, and Treasurer of State to borrow money to pay the interest due on the funded debt on the first day of July next, and defray the expenses of the Constitutional Convention.

Section 1. *Be it Enacted by the General Assembly of the State of Indiana,* That the Governor, Auditor, and Treasurer of State be authorized to borrow from the branches of the State bank of Indiana any sum of money not exceeding one hundred and sixty thousand dollars, which sum, when so borrowed shall be appropriated to the payment of the installment of interest due on the funded debt on the first day of July next.

Sec. 2. That said money shall be repaid to such banks as may lend the same, out of any money in the treasury at any time unappropriated, and the whole shall be refunded by the first day of April, 1852.

Sec. 3. That there be hereby appropriated to the payment of the expenses of the Constitutional Convention a sum of not exceeding fifty thousand dollars, out of any moneys in the treasury not otherwise appropriated: Provided, That there shall first be set aside an amount sufficient to defray the expenses of the legislature and the ordinary expenses of the State. And in case of a deficit, the same shall be made up by a loan, as provided in the first section of this act.

Sec. 4. That the money so borrowed under the provisions of the

preceding section shall be repaid to such branches as may lend the same, out of any money in the treasury not otherwise appropriated, and that the same shall be repaid by the first day of April, 1852.

Sec. 5. This act to take effect and be in force from and after its passage.

Approved, February 12, 1851.

**148. Distribution of Convention Journals and Debates (February 13, 1851).**

*[Laws, Thirty-Fifth Session, 203.]*

A Joint Resolution authorizing the distribution of the Debates of the late Constitutional Convention.

WHEREAS, The Constitutional Convention, at its late session, authorized each member of the present General Assembly, and the officers of the same, to receive a copy of the debates of said Convention, and as but one volume of said debates can be had during the present session of the legislature; therefore,

Section 1. *Be it Resolved by the General Assembly of the State of Indiana*, That the Secretary of State be, and he is hereby authorized and directed, when he distributes the laws and journals of the present (session) of the General Assembly, he is to distribute the remaining copies of the journal of debates and journals to each person entitled to receive the same, and forward them with the laws and journals to the respective clerks' offices in the different counties where such member or officer may reside.

Sec. 2. This joint resolution shall be in force from and after its passage.

Approved, February 13, 1851.

**149. Governor's Proclamation Declaring Constitution in Force (September 3, 1851).**

On September 3, 1851, when the official returns of the election of August 4, 1851, had been received in the office of the Secretary of State, Governor Joseph A. Wright issued the following proclamation announcing the returns and declaring that by its own provision the Constitution would become effective on November 1, 1851. See Appendix VII.

[*Weekly Indiana State Journal, September 20, 1851.*]

### PROCLAMATION.

I, Joseph A. Wright, Governor of the State of Indiana, do certify that on the third day of September, A. D. 1851, E. W. H. Ellis, Auditor, James P. Drake, Treasurer, and Charles H. Test, Secretary of State, at the office of said Secretary of State, in the city of Indianapolis, in my presence, and that of divers other citizens there in attendance, examined and canvassed all the returns made from the several counties of this State, of the votes polled for and against the New Constitution, by the electors of this State, on the first Monday of August, being the fourth day of said month, A. D. 1851; and that the whole number of votes polled "for the Constitution", in the counties making returns, is one hundred and nine thousand three hundred and nineteen. And that the whole number of votes polled "against the Constitution," is twenty-six thousand seven hundred and fifty-five, being a majority of eighty-two thousand five hundred and sixty-four in favor of the Constitution.

I further certify, that at the same time and place, first aforesaid, the said Auditor, Treasurer, and Secretary of State, in my presence and of the persons aforesaid, examined and canvassed all the returns made from the several counties aforesaid, of the votes polled for and against the Thirteenth article of said Constitution, known as the article entitled "Negroes and Mulattoes;" and that the whole number of votes polled for "exclusion and colonization of Negroes and Mulattoes" is one hundred and nine thousand nine hundred and seventy-six; and that the whole number of votes polled against "exclusion and colonization of Negroes and Mulattoes," is twenty-one thousand and sixty-six, being a majority of eighty-eight thousand nine hundred and ten in favor of "*exclusion and colonization of Negroes and Mulattoes.*"

I do further certify, that no returns of the votes for and against the said Constitution, and for and against the said thirteenth article, have been received from the counties of Delaware, Noble, Porter, and Warrick.

I do, therefore, by virtue of the authority vested in me, declare and make known that the New Constitution is adopted by the good people of this State, as the Constitution of the State of Indiana; and that said thirteenth article is declared to be a part of said New Constitution—the whole to take effect and be in force on and after the first day of November, A. D. 1851.



And I do enjoin on all whom it may concern the observance of the eleventh section of the schedule of said Constitution, which provides that, "on the taking effect of this Constitution, all the officers thereby continued in office shall, before proceeding in the further discharge of their duties, take an oath or affirmation to support the Constitution."

[L. S.] In testimony whereof, I have hereunto set my hand, and caused the great seal of the State of Indiana to be affixed, at Indianapolis, this third day of September, A. D. 1851; the thirty-sixth year of the State, and of the independence of the United States the seventy-sixth.

JOSEPH A. WRIGHT.

BY THE GOVERNOR

CHARLES H. TEST,  
*Secretary of State.*

**150. Resolution of Whig Convention of Boone County (May 10, 1851).**

The Constitutional Convention which framed the present Constitution convened on October 7, 1850, and adjourned on February 10, 1851. The Whigs criticised the Democrats for protracting the Convention to an unusual length and incurring a needless expense. This sentiment was formally expressed in a resolution adopted by the Whig convention of Boone county held at Lebanon on May 10, 1851.

*[Weekly Indiana State Journal, June 7, 1851.]*

*Resolved,* That we condemn the extravagance of the late Democratic Constitutional Convention in protracting its sittings to an unusual and unnecessary length, thereby expending a large amount of the people's money unnecessarily.

**151. Resolution of Whig State Convention (February 26, 1852).**

The Whigs had persistently criticised the Democrats for the extravagance of the Constitutional Convention of 1850. The Whig State Convention held in Indianapolis on February 26, 1852, adopted the following resolution demanding that the expenses incurred by the Constitutional Convention be published in detail.

*[Weekly Indiana State Journal, March 6, 1852.]*

*Resolved,* That the Present General Assembly be respectfully requested to cause to be exhibited and published a plain and full account of the expense of the late Constitutional Convention, showing the items and accounts for which such expenditure was made,

and the persons to whom it was paid, and that a copy of this resolution, signed by the officers of this Convention, be presented to the President of the Senate, and Speaker of the House, with a request to lay the same before their respective bodies.

**152. Expenses of the Constitutional Convention of 1850.**

The aggregate total cost of the Constitutional Convention of 1850 was \$88,280.39. A detailed itemized account of the character of the expenses is given in Part Second of the Documents of the General Assembly of Indiana at the Thirty-Sixth Session, commencing December 1, 1851, at page 389. A consolidated account will be found in Appendix XVI.

**(a) MANNER OF KEEPING THE RECORDS OF THE CONVENTION.**

The following resolution, adopted on October 21, prescribed the manner in which the records of the proceedings of the convention should be kept.

*[Convention Journal, 107.]*

*Resolved,* That a record of the proceedings of this Convention shall be kept in the following manner, to-wit: All that class of legislative matter usually contained in the journals of the legislature shall be journalized under the direction of the principal secretary. He shall prepare, or cause to be prepared, an index to said journal; and, if the printing of said journal be ordered, he shall superintend the same. He shall also prepare, or cause to be prepared, a manuscript copy, to be deposited by the President and Secretary, in the office of the Secretary of State, in pursuance of the 14th Section of the Act, entitled "An act to provide for the call of a Convention of the people of the State of Indiana to revise, amend, or alter the Constitution of said State." There shall also be kept a "Journal of Debates," under the direction of the stenographer; but said "Journal of Debates," shall not contain that class of matter usually embraced in legislative journals further than may be actually necessary to identify and give a correct understanding of the subject matter under discussion.

**(b) PRINTING OF THE CONSTITUTION.**

The following resolution, adopted on February 8, 1851, authorized the secretary of the Convention to contract for the printing of the Constitution.

*[Convention Journal, 972.]*

*Resolved,* That the secretary of this Convention be instructed to contract for the printing of the Constitution as provided for by this Convention, at such price as to him may seem reasonable and just.

## (c) BINDING OF THE JOURNAL OF DEBATES.

The following resolution, adopted on February 5, ordered the secretary of the Convention to superintend the binding of the journals.

[*Convention Journal*, 906.]

That the secretary be directed to contract for and superintend the binding of the Journal of Debates and legislative Journal as ordered by the Convention.

## (d) ENROLLMENT OF CONSTITUTION AND COMPLETION OF JOURNALS.

By a resolution adopted on February 8, 1851, the President and principal secretary of the Convention were directed to remain in Indianapolis until the new Constitution was enrolled and the journals completed, and they were allowed their usual *per diem* for the work.

[*Convention Journal*, 982.]

*Resolved*, That the President and principal secretary be directed to stay at Indianapolis until the new Constitution shall be enrolled and our journals completed; and that they file the same with the Secretary of State; and that they be allowed the same *per diem* as when the Convention was in session; and that the President shall have the same power to certify accounts after as before the adjournment.

## (e) COMPLETION OF PRINTING OF CONSTITUTIONAL DOCUMENTS.

The following undated letter written by Austin H. Brown, the printer to the Convention, announces the date on which the constitutional printing was completed and turned over to the binder.

[*Documentary Journal*, 1851 and 1852, Part Second, 400.]

*Dear Sir*:—In reply to your note of this date, I have to state that the printing of the Constitutional Convention was finally completed and turned over to the book binder about the middle of June, 1851, and that there was, at no time, any delay in the execution of said printing.

## (f) COMPLETION OF BINDING OF CONSTITUTIONAL DOCUMENTS.

The following letter, dated Indianapolis, January 16th, 1852, fixes the date on which Samuel Delzell and Co., binders for the Convention, completed the binding of the Journals of the convention.



[*Documentary Journal, 1851 and 1852, Part Second, 400.*]

In reply to your note of this date, I have to state that the binding of the Journals of the Constitutional Convention was not finished until the first of August, 1851; and that the secretary of the Convention always urged the completion of the work at the earliest period, and that the same was done without any unnecessary delay.

(g) REQUEST FOR ITEMS OF EXPENSE OF CONVENTION.

On January 6, 1852, the House adopted the following resolution requesting the Auditor of State to furnish an itemized account of the expenses of the Constitutional Convention of 1850.

[*House Journal, Thirty-Sixth Session, 370.*]

*Resolved*, That the Auditor of State be requested to report at his earliest convenience to this House, the items that constitute the bill of expense of the Constitutional Convention of 1850 and 1851.

(h) RESOLUTION DIRECTING THE WORK OF CLOSING UP THE  
BUSINESS OF THE CONSTITUTIONAL CONVENTION.

By virtue of the following resolution, adopted by the House on January 17, 1852, all of the foregoing resolutions and orders comprised in this document were set forth by the Auditor of State.

[*House Journal, Thirty-Sixth Session, 525.*]

*Resolved*, That there be printed with the communication of the Auditor of State, on the subject of the expenses of the Constitutional Convention, the resolutions under which the President and secretary acted in closing up the business of the Convention, and also the statement of the printer and binder as to the time of completion of their work.



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